

issue? A. No, I think I myself did not at the time understand that properly.

Q. Did you not know that the general Constitutional question as to the validity of the gold embargo act of March 9, 1933, had been decided by the United States Supreme Court at least two years before your case was argued in the Second Circuit? A. There were ten days between the purchase of this gold and the time when export license was needed.

Q. Won't you answer my question, Mr. von Opel? A. I am trying to answer it.

946 Q. I asked you, did you not know that the Constitutional question as to the validity of the gold act had been decided by the United States Supreme Court two years before John W. Davis argued this?

Mr. Ingoldsby: Your Honor, I think that the question assumes a false premise, because there are two gold acts. There is the gold act of 1933, and there is another gold act of 1934. And I think that the case of Norman against the Baltimore and Ohio Railroad, if I am not mistaken, sustains only the constitutionality of the act of 1933.

The Court: You are talking about something else. Do you object to his question, is that it?

Mr. Ingoldsby: Yes, I do, Your Honor.

The Court: I think if the witness understands his question, it is perfectly proper for him to ask him. If he does not, he will say so.

The Witness: What was the question?

By Mr. Burling:

Q. Did you not know that the Constitutionality of the gold act had been affirmed at least two years before by the Supreme Court of the United States? A. I don't remember that, no.

Q. Well, you understood, did you not, that the main,

at least an important part of your argument—that is,

Uebersee's argument—in the Second Circuit in 1936
947 was that the beneficial interest in the gold was in

your father because of the usufruct. A. I don't
think so. I think it was a legal question on Constitutionality.

Q. You don't think that the question of who owned the
gold, that is, whether you had the beneficial ownership—

A. I think only—

Q. Please don't interrupt me. A. Pardon me.

Q. You do not think that there was any issue as to
whether you held the gold or whether your father held
the gold beneficially? A. At the time of the first applica-
tion I think it had some bearing on it, but later on not.

Q. At any rate, you took no steps to inform either Mr.
John W. Davis or Mr. Isidor Kresel, who were your at-
tornies in the gold case, that you found that your affidavit
was entirely wrong as to who had the beneficial interest
in the gold? A. I don't know at what time I informed
Dr. Frankenberg.

Q. I did not ask you a word about Dr. Frankenberg, Mr.
von Opel, I asked you about John W. Davis and Isidor
Kresel. A. No, I did not inform them.

Q. To this day you have never informed John W. Davis
that the affidavit you filed of June 7, 1935 you learned
948 to be incorrect later that summer, is that not right?

A. I wouldn't use the word "incorrect."

Q. Well, you said in your affidavit, did you not, that you
had mere legal title, that your father had the beneficial
interest under a usufruct, that the shares had been de-
livered to Frankenberg as your father's agent, did you not?

A. That was the legal opinion of my lawyers. I did not
write the affidavit.

Q. You did not think John W. Davis knew where the
key to the box was? A. I stated to John W. Davis the
facts.

Q. That's right. You stated the facts, and you stated to

him, did you not, that you had mere legal title, that your father had the beneficial interest—let me finish please—under the usufruct, and that the key had been delivered to Frankenberg as your father's agent? That is what you told Mr. Davis, is it not? A. He certainly wouldn't take my legal opinion. It was a gift contract, and let him read the gift contract and study it. I didn't advise John W. Davis on what was the legal—

Q. Of course not, Mr. von Opel, but you advised him as to the facts, did you not? A. Yes, definitely.

Q. Thank you. And you told him that you had delivered the key of the box to Frankenberg as your father's agent? A. My father told me he didn't want him.

Q. Didn't you? A. Yes.

Q. And that question of fact, whether Frankenberg was or was not your father's agent, you understood to term it whether it was or was not in Niessbrauch, did you not? The answer to that is yes or not. A. You are using the word Niessbrauch again, and to which Niessbrauch you mean. There is a right in rem and there is a right in personum.

Q. Whether or not there was a right in rem was determined by the fact of whether your father accepted or did not accept Frankenberg as his agent. A. It is right in—

Q. Is that not right? A. Yes.

Q. So you understood in 1935 and 1936 that the question of fact of whether Frankenberg was your father's agent or not determined, ultimately, whether you had a right in rem to the gold or whether that right in rem was your father's. A. You are asking me for a legal opinion.

Q. I am not. I am asking you if you did not understand that legal fact in 1935. A. No, I didn't see that clearly at that time.

Q. You did not have any understanding that it was important to tell John W. Davis that your affidavit was in error as to the fact of Frankenberg being your father's agent, is that your testimony? A. I

think at the time John W. Davis went into the Second, into the Court of Appeals, that didn't play any part in the entire action. That is what I understood.

Q. Although you are not a lawyer, you determined that it was not necessary to tell Mr. Davis of this error in your affidavit, is that correct? You understood that your affidavit was part of the record before the Circuit Court, did you not? A. Affidavit was made for an application.

Q. Will you answer my question, please? A. I didn't know those.

Q. You never saw this book (indicating)? A. I saw this book later, after everything was over, and I always called it the most expensive book I ever have seen.

Q. I hope I will be able to agree with you? Mr. von Opel.

Mr. Burling: I ask that two more documents be marked the next numbers.

(Accordingly, a letter to Dr. Gros dated August 2, 1935, and its translation were marked Defendant's Exhibit 48 and 48-A for identification.)

951

By Mr. Burling:

Q. Will you examine Defendant's 48-A, please, and state whether that is a letter which you wrote to Dr. Gros on August 2, 1935? A. Yes, I see it is the answer.

Q. It is a letter you wrote to Dr. Gros? A. Yes, it is.

Q. Thank you. Where were you when you wrote it? A. I was at the time in Germany.

Q. Will you state where? A. In Westerland.

Q. And where is that? A. That is on the island of Sylt.

Q. And that is in the North Sea? A. Yes.

Q. What is Haus Kliemann? A. That is a private house there, where I had a furnished room.

Q. This is a reply to another letter from Dr. Gros to you, is that your opinion? A. Yes.

Q. Do you say as follows: "Your argument that a usufruct had not yet been created did not seem very effective to me at the time, nor do I believe that your opinion will prevail today." Will you state what opinion of Dr.

952 Gros' you were referring to? A. I was referring to Dr. Gros' opinion that in 1934, at the time of the criminal proceedings, we should have tried to fight that out on a legal basis, and I at the time was of the opinion that legal arguments didn't help, it was the time of the blood purge, thousand people killed, and I thought it better to give in at the time.

Q. We turn over about two paragraphs. A. Which paragraph?

Q. About two paragraphs. I am going to read you in English. See if you can find the German: "From a purely legal point of view." A. Oh, the following paragraph.

Q. "From a purely legal point of view the situation, I think, is such that he is not allowed to waive any usufruct which has accrued without a foreign exchange license." Will you explain to whom you are referring when you say he is not allowed to waive? Who was not allowed to waive? A. My father. I am speaking about the probability that an actual payment would be made.

Q. Was it your opinion in 1935 that if a valid usufruct had been created, your father could not waive it without a foreign exchange license? A. No, I didn't say that. I say here in this sentence, if actually a payment would be made, he could not waive this payment under
953 the foreign funds control.

Q. Is not the translation of it as follows: "From a purely legal point of view the situation, I think, is such that he is not allowed to waive any usufruct which has accrued without a foreign exchange license." A. You leave out the most important word in the sentence, which means angefallenen. That means to say the proceeds, the

money coming, derived from the usufruct. And I was of the opinion, and still am, that any payments actually credited to my father, he could not waive the right to claim them under the foreign currency regulations.

Q. I used the word "accrued." The translation which we have, and which the parties have stipulated is correct, reads, "He is not allowed to waive any usufruct which has accrued without a foreign exchange license." A. I think the word "accrued" is not the proper translation.

Q. At any rate, it is. A. It says here *angefallen*; it means, actually paid in.

Q. Or arisen? A. Arisen, no, the word *angefallen* means an actual payment.

Q. Well, the plaintiffs have stipulated, Mr. von Opel, that this is a correct translation.

954 Q. At the time you wrote this letter you had learned from your father, had you not, that there was not any usufruct at all—that is, any in *rem* usufruct—because he would not accept Frankenberg as his agent? A. I think that was prior to this date.

Q. You already learned this. A. No, no, no. I wanted to say the opposite. I think the discussion with my father took place after this letter. I think, as I said before, in summer or fall, 1935, it was in middle summer, I think, the actual waiving took place about several weeks thereafter.

Q. Did you not testify that as soon as you went back to Germany after having talked to your lawyers in New York about the gold case, you went and told your father about having given the key to Frankenberg? A. Yes, at the first opportunity I saw him, and I think I saw him at the time we filed this report to the German Government.

Q. But before you went to see your father, you went to the Island of Sylt, which is a pleasure resort, is that right?

A. Yes.

Q. And took a furnished room there? A. Yes.

955 Q. You did not go directly to your father and tell him what you had done, and that the usufruct had been brought into existence? A. I don't know

whether he was present in Germany at the time. I don't remember that.

Q. As a matter of fact, if you examine this very document, you will see that your father was in Berlin at the time, will you not? Look at the last sentence. Does it not read: "My father is at the moment still in Berlin. You might take the opportunity to discuss with him the different questions I raised in this letter, especially the usufruct question." A. Yes.

Q. So you mean that you were going to have Dr. Gros talk to your father about the usufruct question while you were sitting in a summer resort, without taking the trouble yourself of going to Berlin and telling him what you had done in Zurich and New York? A. I think that was Dr. Gros' business to attend to matters inside of Germany, that was not so much my concern.

Q. Had you told Dr. Gros at this time that you had delivered the key to Frankenberg as agent for your father? A. Dr. Gros knew nothing about that.

Q. So how could Gros talk intelligently to your father about the usufruct question when you had taken the important step of delivering the key to Frankenberg as your father's agent? A. It was a mere legal question, to explain to the German authorities the gift agreement, and the stipulation.

Q. I know, it was a legal question, but Dr. Gros could not do that without knowing about the facts, could he? A. He learned the facts shortly thereafter.

Q. But here you are, while you are at a summer resort, the Island of Sylt, writing a long letter, a six-page letter to Dr. Gros, suggesting that he talk to your father about the usufruct question, and yet neither Gros nor your father had been told at this time that you had given the key to Frankenberg to hold, as your father's agent. A. As I have stated—

Q. Is that statement a fact? A. Yes.

Q. Now, will you explain how you thought your father

and Gros could talk intelligently about the usufruct when neither of them knew the important fact that you had brought it into being by delivering the key to the box to Frankenberg? A. At this time I did not know what action my father would take, and I advised Dr. Gros to inform my father about his legal opinion on the matter.

Q. But how could he have a legal opinion without knowing the facts? A. He knew all the facts necessary.

Q. But he did not know about your delivery of the
957 key to Frankenberg, did he? A. That was of little interest to the German Government.

Q. Well, would it not make all the difference between whether a usufruct had arisen, and whether one had not arisen? A. The question is—

Q. Wouldn't it? A. I don't get your question.

Q. You say you asked Dr. Gros, a lawyer, to discuss with your father the legal question of the usufruct, and you have testified over and over again that you understood that the usufruct would be created by delivering the key to Frankenberg, as your father's agent, and you testified that you thought that your father would make Frankenberg his agent, and yet you did not tell either your father or Gros this essential fact. A. I was about to see my father shortly thereafter.

Q. Why did you write to Gros, telling him to go and talk to your father without telling him the essential facts?

A. So that he would get Dr. Gros' unbiased opinion on the matter.

Q. What conceivable good would Dr. Gros' unbiased opinion on a matter be if he did not know the essential facts of the matter? A. That was only a small part of the entire problem, Mr. Burling. We were concerned—

958 Q. We all agree that Mr. Gallagher is a very learned man. Do you think that I would pay him

very much for his opinion as to the validity of the title to my house, right this minute? I am trying to make you understand what my questions are about. That is why I ask you this hypothetical question. Do you not understand that Mr. Gallagher's opinion as to the validity of title to my house is worthless because he does not even know where my house is, or whether I have title or whether I rent it? Is that not clear to you? A. Yes.

Q. And is it not also clear to you that a lawyer's opinion is worth something only if he knows the facts which he is talking about? Is that not clear to you? A. In this specific—no, it is not.

Q. It is not clear to you that a lawyer has to know the facts in order to have an opinion that is worth something?

A. I didn't say so, Mr. Burling.

Q. Is that clear to you, sir? Is it clear to you that a lawyer has to know the facts in order to express an opinion about a situation? A. He has to—

Q. Is that clear to you? A. He has to have the legal background.

Q. Does he not also have to know the facts? A. And I told him the facts.

959 Q. Where in this letter is there a word about your having—A. I told you so, that I saw him shortly thereafter.

Q. Who? A. Dr. Gros and my father.

Q. But on this occasion you suggest that Dr. Gros talk to your father. A. About the entire matter, yes.

Q. But you do not tell him the most important fact in the entire matter, do you? A. My father was the one who had to make up his mind, it was not myself only.

Q. But your father did not know what you had done with the key to the box at this time. A. At this time he didn't know yet, no.

Q. And Gros did not know, and you did not go to Berlin to tell them? A. No.

Q. Thank you. I will go on now. Will you look at the

paragraph before the last. Do you see the sentence, "Nobody would regret that more than I myself, for I, too, am waiting for my 20 per-cent." A. You cannot pull that out the entire—

Q. I asked you if you saw it. You see it, do you not?

A. Yes; certainly.

960 Q. Will you point out to me in German? A. Here (indicating), and here.

Q. Does it not say "meine"—what is this? A. Percentages.

Q. The word before that is "meine"? A. Yes.

Q. So 20 per cent of the income you regard as "meine?"

A. Yes.

Q. And "meine" is the German word for "mine?" A. Yes, definitely.

Q. Whose were the other 80 per cent? A. The other 80 per cent had to be accounted for with my sister.

Q. And that accounting was to take place when your parents were dead? A. Yes, as it is stipulated in the last will.

Q. Who owns the other 80 percent until that event should take place? A. I could really dispose of them.

Q. Whose were they? A. They were mine, of course.

Q. 80 per cent is yours, but you are still waiting for "my 20 per cent?" A. You are mixing up an accounting figure with the actual income and ownership. You can't throw those two things together.

961 Q. Did you ever tell any agency in the year 1942 that your father had a usufruct?

Mr. Ingoldsby: I object. The question is much too broad, "Did you ever tell any agency." I think if he intends to impeach the witness, he should establish—

The Court: If he has any recollection of it, he may answer.

The Witness: Should I answer the question?

By Mr. Burling:

Q. Yes. A. I don't recollect that.

Q. You were questioned by the Miami hearing board on this matter, were you not? A. Yes. I don't recollect any details.

Q. Was this question asked you, and did you give this answer, at page 94: "Why did you want the total of this 1,250,000 in gold to be vested in the name of this corporation?"

"Answer: Because I wanted it—you see, I spoke about this usufruct, about this income, this 80 per cent, the usufruct agreement. My father was entitled to part of the income, and I knew I would not keep this gold because it was only gold temporarily. I knew I would acquire stock of some corporation, and that is the reason that everything was put over into this corporation's name."

Is that correct? A. Yes.

962 Q. So in 1942 you stated that your father was entitled to part of the income. A. Pardon me, that refers to 1934 or '5.

Q. You were being questioned— A. About the gold, in connection with the gold.

Q. You were being questioned in 1942. A. In connection with the gold.

Q. The transaction that you testified to in '42, "My father was entitled to part of the income." A. At this time of the gold, yes.

Q. Your father was entitled to it, yes. A. It was the gift agreement, certainly.

Q. That is, he had title to part of the income, is that right? A. He could, if he so wanted, before he waived, restore up to 80 per cent of the income, yes.

Q. You did not say in your gold case affidavit, did you, anything to the effect that you were to have full use of a hundred per cent of the income unless your father were to demand a part of the income? You did not say a word about that in that affidavit, did you? A. That is a gift agreement, I did not explain the stipulations of the gift agreement.

Q. There is nothing that appeared in the face of
963 the gift agreement that indicates that your father
is not to have an immediate usufruct, and immediately
to have 80 per cent of the income, is there? A. I
can't read that out of the gift agreement. It means that
he has—

Q. There is not a word in it that indicates, is there, on
the face of the instrument, that your father was to receive
the income only if he demanded it, and that if he did not,
you were to have the right to a hundred per cent? A. No,
you have to—the instrument is not quite clear on the point,
but it stipulates what has to be done about those 80 per
cent, and it therefore indicates that my father never
wanted to draw anything.

Q. It does not indicate on its face, does it? A. Certainly.
Otherwise, all those prohibitions would not be in it.

Q. Do you now testify that from the face of the gift
agreement one can see that you had a right to a hundred
per cent of the income unless your father should make a
demand? A. You are speaking about the face of the gift
agreement. What do you mean by that?

Q. What the words say, the text. A. It is not only
what the text says, but what the text implies, and what
the intention of the parties is; all those factors have to be
taken together.

Q. My point now is that in your affidavit you did not
say a word about the fact that you had the right
964 to a hundred per cent of the income unless your
father demanded 80 per cent, and you then replied,
"The District Court could not tell that from the gift
agreement." I now say they could not, because there is
nothing on the face of the agreement that spells that out.
Now, do you agree with me? A. I did not interpret the
gift agreement to any American authorities.

Q. Yes, but you did say that you had mere legal title
plus 20 per cent of the dividends and interest, did you
not? A. That is what the lawyers explained to me.

Q. Now you say you understood on October 5, 1931, that you were to have a right to a hundred per cent of the income unless your father made a demand, is that right?

A. I didn't say that, on October—which date?

Q. October 5, '31. A. October 5, '31, you mean that is the date of the gift agreement?

Q. Yes. A. What did I say, sir?

Q. I wasn't there. I am asking you what you said was said there. Is it not true that you have testified before that you and your father agreed that you were to have the right to a hundred per cent of the income subject to an accounting at his death, unless he made a demand for 80 per cent of the income? A. I said this morning that, when you spoke about the income and income payments, that I, of course, had to pay the entire income as long as it—

Q. Will you please answer my question, Mr. von Opel?

A. I didn't quite get it.

Q. Did you not say this morning, or yesterday, that you and your father agreed that you were to have all of the income subject to an accounting at your father's death, and subject also to his right to demand up to 80 per cent of the income? A. That is what is stipulated in the contract, yes.

Q. That is certainly not the terms of the contract. But did you say that that was agreed between you and your father? A. I said that there was no paragraph in the contract preventing me from using the entire income.

Q. But you did not see fit in making out your gold case affidavit to say a word which indicated that you had the right to use the entire income. A. I only gave the gift contract to the lawyers.

Q. You did not say that you had the right to the entire income, did you? A. And it is not so stipulated in the gift contract. It is only implied.

Q. You did not say that it is implied. You said, did you not, "Before accepting, however, I protested to my father

against the insertion of the restriction, the reservation of usufruct," etcetera, "which left me with a mere legal title plus 20 per cent of the dividends and interest. My father, however, insisted on these terms."

A. Yes, he wanted an accounting with my sister.

Q. But will you not agree that any reasonable and fair-minded man would read this as a statement by you that all you had as a beneficial interest was 20 per cent of the income? A. That is what it stipulated in the contract, that I have to account with my sister for 80 per cent of it.

Q. After your father's death? A. The gift contract does not mention a single line how and when I have to pay my father. If he had wanted an income, there certainly would be a specific stipulation that I would have to account for him at the end of each business year, and that he then within four or six weeks would have to ask for payment. Nothing of this sort is in the contract.

Q. You knew, did you not, that also filed on behalf of the plaintiff here in this gold case, was an affidavit by Wronker-Flatow? A. I think so.

Q. You read it before it was filed, did you not? A. I don't think so.

Q. Did you ever hear the expression "Consortium O"?

A. What is it, please?

967 Q. Did you ever hear the expression, "Consortium O"? A. I think that was used in connection with some loan by the Adler Bank.

Q. Is it not the fact that quite large accounts were carried in the books of Uebersee under the heading Consortium O? A. At what time, Mr. Burling?

Q. I don't know, at any time, so far as you know. A. That is possible.

Q. To the best of your knowledge, were there accounts for Consortium O, or weren't there? A. That is possible.

Q. Of course it is possible, it is possible that I had an account in this book. A. I don't remember the books of Uebersee, any phase of it.

Q. The name Opel begins with the letter "o", does it not?

A. Yes.

Mr. Burling: I ask that a photostat of the Ausland Verwaltungs-Conti Conto Corrent, which we translate "Foreign Management Accounts—Current Accounts" be marked for identification as one number, and then the sheet A, B, C, etc.

Accordingly, the above-referred to documents were marked Defendant's Exhibit 49A through J, inclusive, for identification.)

968

By Mr. Burling:

Q. What does the word "Consortium" mean in German? A. It is a German word.

Q. What does it mean? A. You mean in English?

Q. No, as used in German, what does it mean? A. The English translation—

Q. Were the books of Uebersee kept in English? A. No. If you are asking me to explain what the word means—

Q. That is right, please do. A. I'm not quite clear on this point. I think this name was used by Adler Bank.

Q. Just in general, if you read the word "Consortium" in a German book, what would it mean to you? A. Mostly it means large assembly of people.

Q. Does it not mean syndicate? A. A bank might use it in this way.

Mr. Burling: I ask the plaintiffs to concede.

Mr. Gallagher: No objection.

Mr. Burling: I offer in evidence Defendant's Exhibit 49-A through J, which are photostats of what in English is a book called "Foreign Management Accounts—Current account."

(The documents above referred to, heretofore identified as Defendant's Exhibit 49-A through J, inclusive, were received in evidence.)

969

By Mr. Burling:

Q. I ask you to hold that and then to look at page 16. In your years of business experience you understand simple bookkeeping, do you not? A. Not this kind of bookkeeping. It is rather complicated and old-fashioned.

Q. Would you look at page 16 and see if there is not, if there was not credited to Consortium O, between September 12, 1932, and September 30, 1934, dollar amounts equaling \$2,613,840.21? A. Which entry is it on this page?

Q. I will ask my accountant. (The entry was pointed out to the witness by Mr. Baum.) A. You spoke about '32?

Q. Between the years '32 and '34. A. Yes, every year a different entry.

Q. Is not the total the figure I gave you? A. I don't think that one can total all the years. It must have been the total of '34.

Q. All right, that settles that. Does that not indicate that in the year 1934 Consortium O was credited \$2,613,840.21? A. And also debited at the same time, if I understood it correctly. Isn't that just an offset account?

Q. Will you show me what the withdrawals are? 970 A. I don't understand it. I would have to ask a bookkeeper.

Q. Is it not the fact, Mr. von Opel, that Consortium O is the code name for the 80 per cent of the income which was credited on Uebersee's books to your father, or your father and mother under the heading Consortium O? A. How can there be an income of 2.6 million. No, you are entirely mistaken.

Q. Could there not have been over a period of three years? A. I think that this name was used in the beginning before Frima was formed.

Q. What was it used for? A. Just as a name, an account name.

Q. An account name for what? Apparently I made an accounting mistake, myself. Is it not true, Mr. von Opel, that Consortium O represents that part of the principal which was reserved under the usufruct provisions of the gift agreement? A. Definitely not. It's fully out of the question.

Q. And what, to the best of your knowledge and belief, did the account represent? A. It was just an account name or number. Some banks use numbers, other banks use names.

Q. Do you think the words Consortium O were
971 selected by whimsy? A. I do not know who put that name into it; I didn't do it.

Q. You have no explanation at all to offer as to what this item on the books is of the plaintiff? A. I have to look it over. As far as I could see, it is an offset item, debited and credited.

Q. The original is in the possession of your counsel. Will you agree to do so tonight, please? A. Yes, I will be pleased to do that.

Q. Is any person, so far as you know, who is familiar with the books and records—that is, who kept the books and records of the plaintiff corporation—going to testify in this case? A. The bookkeeper is in Switzerland, Mr. Gaeng.

Q. Will you answer my question, sir?

Mr. Gallagher: Just a moment. Your Honor, we will advise the Government at this time that we have a Swiss accountant who is going to testify with regard to the books.

Mr. Burling: May I inquire of counsel if this Swiss accountant has kept the books?

Mr. Gallagher: No, but he has studied all the books, and he will be able to explain any discrepancies or inaccuracies.

972 Mr. Burling: I am not inquiring as to discrepancies or inaccuracies, I want to know what the Consortium O account was. I will ask the witness.

By Mr. Burling:

Q. Is any witness going to testify here, so far as you know, who will be in a position to testify of his own knowledge as to what Consortium O represents in the accounts?

A. We can find out every detail you like, Mr. Burling.

Q. I want to know if anybody is going to testify to that under oath. A. I don't know what my lawyers intend to do.

Q. You have been working with them daily, and often nightly for weeks, have you not? A. Yes.

Mr. Ingoldsby: We will certainly agree that the accountant is going to testify, and he will be able to identify the account.

Mr. Burling: I can identify the account myself, if Your Honor please. I am trying to establish that the plaintiff corporation is failing to bring any witness whomsoever who can tell us what Consortium O means.

Mr. Ingoldsby: I do not happen to know offhand, but as soon as I find out, we will certainly agree.

Mr. Burling (Handing document to the Clerk): May this be marked.

973 (Accordingly, a photostat copy of a document signed Overseas Finance Corporation, dated November 27, 1935, was marked Defendant's Exhibit 50 for identification.)

Mr. Burling: I ask for a concession as to Defendant's Exhibit 50-A, which is a photostat of a document signed Overseas Finance Corporation, dated November 27, 1935, taken from the books and records of the plaintiff.

Mr. Gallagher: Yes.

By Mr. Burling:

Q. I show you 50-A and ask you if you have ever seen that. That is a letter from the Overseas Finance Corporation, is it not to the Swiss Federal Banking Commission in Berne? A. Yes.

Q. And does it not recite in numbered paragraph one, "The entire capital of our company comes from a single group which also has a controlling interest in the capital stock"? A. Yes.

Q. Will you identify the members of the single group therein referred to? A. That was I, myself.

Q. Now this time you are a group, is that it? A. Yes, in banking terms this word is very often used.

Q. It did not mean the Opel family? A. No, sir, it definitely did not.

Q. Going back to October, 1931, you sailed on the 974 Europa, did you not? A. Yes.

Q. And you know, do you not, that your father made a long-distance telephone call to John Thomas Smith the 8th of October, that is, the day after the Europa left Bremerhaven? A. I don't know, it's possible.

Mr. Burling: Will you mark this, please (handing the Clerk a document).

(Accordingly, the document above referred to, a telegram signed Wilhelm von Opel, was marked Defendant's Exhibit No. 51 for identification.)

By Mr. Burling:

Q. I will read you a telegram, the genuineness of which has been admitted by the plaintiff.

"John Thomas Smith"—and then the cable address of General Motors, New York. "Unless advised otherwise, telephone you the 8th 10 a. m. New York Standard Time."
—Signed, "Wilhelm von Opel."

Does that refresh your recollection as to whether you ever heard that your father had called Smith while you were at sea? A. There was an exchange of wires around this time. This telephone call I don't remember. I was at sea, as you say.

Q. Did either Smith or your father ever tell you what the substance of this telephone call was? A. I don't remember. It must have some reference to those 600 975 Opel shares. At the time, as you know, we tried to get General Motors to put a gold clause into the escrow agreement, and my father assisted me in this endeavor.

Q. And you landed in New York on the 13th, is that right? A. Yes—I am not sure of the date—13th, 14th, around this time.

Q. And you first went to the National City Bank, as you testified? A. Yes.

Q. And then you went and talked with John Thomas Smith and asked for a gold clause to be put in the escrow agreement? A. Yes, some safety against the devaluation.

Q. You did not tell Mr. Smith, did you, at this time, about the gift? A. No, I thought so previously, but now I find out through this wire from the bank that it was not General Motors but the National City Bank. I asked about technicalities.

Q. On October 17 you put the shares to General Motors? A. Yes, I did.

Q. And that was under the power of attorney which we have previously discussed? A. Yes, sir.

976 Q. Then is it true that you opened a series of accounts on October 19 with the City Bank Farmers Trust Company? A. A series of accounts? I don't remember that.

Q. Or else one account broken down into various sub-accounts? A. Oh, that was much later, Mr. Burling. It was not at this date. You spoke about October 20 or so.

It was done a few days later. I guess it was around October 28, if I am not mistaken.

Q. Will you examine plaintiff's 17 and see if that refreshes your recollection as to when you opened an account or series of accounts at the City Bank Farmers Trust Company? I gave you the wrong exhibit number, I am sorry; it is plaintiff's 70. That is your signature at the bottom, is it not? A. Yes, sir.

Q. Will you examine the date of that? A. October 19.

Q. Does that refresh your recollection as to when you opened the accounts? A. Yes. But that was secondary accounts, it was not yet the transfer account.

Q. Now, is it true that whenever these were opened one account was called Fritz von Opel main account principal?

Do you recall? A. Yes.

977 Q. And one account was called Fritz von Opel special income account? A. Yes.

Q. And is it not true that instructions were given the bank that income on any securities which were deposited in these accounts was to go 80 per cent into the principal account and 20 per cent into the Fritz von Opel special income account? A. For accounting purposes, yes. May I say, this date, October 19, does not refer to the opening of an account. It is kind of an increment in case an account should be opened. The date on here is November 6, 1931.

Q. You could not have opened it on November 6, 1931, could you? A. That was the date.

Q. You did not open that account on November 6, 1931, did you? A. That is apparently the date at which this instruction—

Q. But you did not give the instruction on that date, did you? A. As I tried to tell you, the first account as to my best recollection was opened around October 28.

Q. At any rate, this date in November is clearly wrong, is it not? A. I don't know.

978. Q. You could not have given instructions in the New York Bank on November 6, could you? A. I think this page does not bear my signature.

Q. I just say you did not do anything at the City Bank Farmers Trust Company on November 6, did you? A. I think that was filled in by the bank.

Q. Won't you answer my question, please? A. I didn't do it, I don't think so.

Q. You could not have done it on that date. A. No, I was not there.

The Court: Have you about finished that subject?

Mr. Burling: If I could ask about two more questions, I will be through with these accounts entirely.

By Mr. Burling:

Q. Did you not instruct the bank at this time to prepare duplicate statements on the main account, one of which was to be sent to your father, and one of which was to be sent to you? A. In regard to the income, yes. May I explain this matter a little further.

Q. Yes. A. The payments from General Motors in return for the sale of this 600 Opel shares went into an account for Wilhelm von Opel, which I had opened with the second additional power of attorney. This money
979 remained—let's try to put it this way: I gave instructions already on October 1928 that everything which later on in the middle or the end of October should come into this account should immediately be transferred to my own account. So I do not understand, as there was no money available at the time, how an account could have been opened on October 19. There must be some mistake. The transfer to my account took place after November 16, 1931.

Q. In any event, with regard to the main account you executed an instrument, did you not, authorizing the bank

to follow any and all written instructions given the bank by your father, Wilhelm von Opel, for the disposition of any of the securities deposited. A. Pardon me, from which power of attorney are you reading?

Q. Did you not sign an instrument handed to the City Bank Farmers Trust Company in which you say, "I hereby authorize and request you to follow any and all written instructions given by Wilhelm von Opel in respect of the sale or exchange or other disposition of any or all of the securities which you as custodian or otherwise now or in the future may hold for my account," etcetera, "Very truly yours, Fritz von Opel."

Mr. Ingoldsby: May I ask whether or not you are reading from a bank form or from something prepared by Fritz von Opel?

980 Mr. Burling: You may inquire, Counsel.

Mr. Ingoldsby: That is what I am inquiring.

Mr. Burling: If you will consult documents which have been at your disposal for months, you will find the answer to your question.

Mr. Ingoldsby: I have had so many documents at my disposal for so many months—

The Court: He may look at it.

Mr. Burling: I have no more questions, Your Honor, on this topic.

The Court: Did you want to know if he signed this?

Mr. Burling: Yes. (To the Witness) Did you sign this?

The Witness: That is my signature, yes.

The Court: Tomorrow morning at ten o'clock.

(Accordingly, at 4:30 p. m. the trial was adjourned until 10 o'clock the following morning, Friday, December 27, 1948.)

PROCEEDINGS

983 Mr. Burling: May I proceed, Your Honor?
The Court: Yes.

Mr. Burling: I ask Your Honor to take notice, at Volume 83, Federal (2d), 225, the case of Uebersee Finanz-Korporation against Rosen, et al, which was decided—

I am sorry, Your Honor, I have forgotten the date.

The Court: April 6, 1936.

Mr. Burling: Thank you. And thereafter, as appears from 298 U. S. at 679, Uebersee Finanz-Korporation petitioned for certiorari to the Supreme Court, and the Supreme Court denied the petition on May 25, 1936.

I have sent for a copy of the petition for certiorari, if Your Honor please. I don't have it available at the moment.

The Court: All right.

Whereupon, FRITZ VON OPEL returned to the witness and was examined and testified further as follows:

Cross Examination (Resumed)

By Mr. Burling:

Q. As a result of your negotiations with the General Motors officials, in October, 1931, you received payment for the Opel shares partly in cash and partly in stock
984 of General Motors? Is that right? A. Yes, sir.

Q. And the General Motors shares were deposited with the City Bank Farmers Trust Company? A. Yes.

Q. And you instructed the bank to hold these shares subject to your father's further instructions, did you not?

Do you recall, Mr. von Opel? A. They were to be treated under the escrow agreement between General Motors and my father.

Q. No; I am talking about the General Motors shares you received in payment for the Opel shares. A. They were received on an account of my father; and, after two days, transferred to my own account.

Q. But at any rate, when they were first received, you instructed the City Bank Farmers Trust Company to hold the shares subject to your father's instructions? Is that not right? A. Certainly, because there was no other way—

Q. Thank you. Then that is right? A. Yes.

Q. Will you look at Defendant's Exhibit 52 and state whether that is not a document signed by you? A. Yes, certainly.

Mr. Burling: I offer it in evidence.

985 (The document referred to was marked and received in evidence as Defendant's Exhibit 52.)

The Witness: That was the purpose of this power of attorney of my father, to simplify matters.

By Mr. Burling:

Q. I again ask you not to volunteer. Just answer my questions, please.

And on October 21 your father instructed the National City Bank, or informed the National City Bank that you were authorized to do certain things with the General Motors shares and the cash. Is that not right? A. Yes. There was some exchange of wires, and a second power of attorney was given to me, which is not yet a definite one.

Q. I ask you to examine Defendant's Exhibit 53 and state whether that is not a wire giving you additional powers? A. That is more or less a repetition, as I remember, of the first power.

Q. But you recognize this as a power of attorney given

to you? A. Yes; I think more or less a repetition of the first one.

Q. It was a cable received on October 21? Isn't 986 that so? A. It is addressed to the bank, yes.

Q. And this power of attorney limited your power to withdraw the shares, or the securities, so that you could withdraw securities only if you replaced them with the purchase price or with other securities? Is that right? A. Yes; I told you it was just a repetition of the first power.

Q. Is that right, Mr. von Opel?—on October 21 your power of attorney given by your father was limited so that you could withdraw securities only if you replaced them with other securities or with the price? A. Yes.

Q. You did not at this time get a full power of attorney? A. No. I got the full power on October 24.

Q. On October 24? A. Yes.

(Mr. Burling: I offer Defendant's Exhibit 53 in evidence.

(The document referred to was marked and received in evidence as Defendant's Exhibit 53.)

Mr. Burling: I ask that a group of twenty photostatic pages be marked as one exhibit, please.

By Mr. Burling:

Q. After you received the full power of attorney, 987 you transferred the cash from the National City Bank to the City Bank Farmers Trust Company? Is that correct? A. Not quite, Mr. Burling. I received the full power of attorney on October 24, and I instructed the National City Bank Farmers Trust that if General Motors would make payment, those payments would have to come in between November 16 and November 24; that

those payments should then immediately, these future payments, be transferred to my own account.

Q. Then at some point there was a transfer to the City Bank Farmers Trust Company? Is that correct? A. I gave this order about three weeks ahead of the time when the proceeds were received.

Q. Wasn't the account transferred to the City Bank Farmers Trust Company? A. You mean, were the proceeds paid?

Q. The entire account, was it not transferred? A. There was no account yet, because payments were not made before November 16.

Q. All right. At some point the account was opened at the City Bank Farmers Trust Company? Is that correct? A. At which point do you mean?

Q. When did you open an account with the City Bank Farmers Trust Company? A. It must have been around the same time.

988 Q. When was that, please? Will you fix the date?

A. I think I gave the order on October 28, if I am not mistaken.

Q. All right, sir. A. And it had to do with those future proceeds.

Q. And you gave instructions, did you not, that one-fifth of the income was to be deposited in one account, and four-fifths in another account? Isn't that true? A. No, that is not correct.

Q. Well, what instructions did you give? A. That one-fifth had to be set aside for me, but no disposition was to take place with the remaining four-fifths. They were not separated. They were kept in the account. Only one-fifth was separated for myself.

Q. One-fifth was set aside for you, and the remaining four-fifths remained in another account? Is that right? A. No—remained in the main account. They were not taken out of this account.

Q. Well, did you not instruct the City Bank Farmers Trust Company in the following words?—

“On the 6th day of each month transfer 20 per cent of income collected to Fritz von Opel Special Account Custodian, with advice to him, and 80 per cent to principal main account, duplicate statements of main account to go to Wilhelm von Opel, Wiesbaden, Steubenstrasse 34.”

989 A. I think you left out part of the statement, because you began to say something about proceeds, and then you continued to say something about accountings.

Q. Did you give these special instructions?—

“On the 6th day of each month transfer 20 per cent of income collected to Fritz von Opel Special Account Custodian with advice to him, and 80 per cent to principal main account, duplicate statements of main account to go to Wilhelm von Opel, Wiesbaden, Steubenstrasse 34.”

A. I don't understand the words “advice to him”.

Mr. Ingolsby: If Your Honor please, may the witness see the entire document, so that the portion is not read out of its context?

The Court: He has a right to see the document he is reading from.

By Mr. Burling:

Q. I show you Plaintiff's Exhibit 70, and call your attention to some words under the printed heading “Special Instructions”. A. Yes; that is exactly what I said.

Q. Thank you. A. The 20 per cent set aside for me—

Q. Thank you, Mr. von Opel; that is what I want
990 to know.

When you gave those instructions, it was your understanding, wasn't it, that your father had given you all his interest in the Opel shares? He had given it away?

He didn't have any ownership or title in the Opel shares?

A. Definitely not, but—

Q. All right. A. But he had certain rights

Q. But he didn't have any definite title? A. Title—definitely not, no.

Q. Did your father ever tell you that on October 21 he had a conference with Mr. Mooney? A. I heard about it later, yes.

Q. He told you that when you got back to Wiesbaden? Isn't that right? A. Yes, and I think—

Q. Thank you. And you knew Mooney was the president of General Motors Export Corporation? A. Yes.

Q. And you knew that Mooney had direct personal responsibility for General Motors' dealings with Adam Opel A. G.? Isn't that right? A. Only on a management basis. He had nothing to do with this financial dealing.

Q. No; but Mooney was the General Motors man
991 who was in charge of the Opel operation? A. Of the operations, yes.

Q. Now, did your father at any time tell you that in the course of a conversation with he had with Mooney, that in the course of this conversation he told Mooney that he, Wilhelm von Opel, would be willing to retain his interest in Adam Opel A. G. and to agree to hold his share until January 1, 1936, on condition that it be agreed that payment be made in gold rather than in marks?

Did he tell you that? A. I came to New York—

Q. Did he tell you that, sir? A. Yes, I knew about that, sir.

Q. Did he tell you he had said that to Mooney? A. You can't put it that this way.

Q. Well, he either did or did not tell you that. Which is it? A. I heard about it first from John Thomas Smith.

Q. I want to know if your father told you he had that conversation with Mooney.

Mr. Gallagher: Will you make the time a little more definite, Mr. Burling?

Mr. Burling: When he returned to Wiesbaden.

The Witness: I think this matter was discussed.

By Mr. Burling:

992 Q. Thank you. So he did tell you he had this conversation with Mooney? A. And other people with General Motors.

Q. Fine—including Mooney? A. Including Mr. Mooney; yes.

Q. Thank you. On October 22, 1931, did you have a conversation with John Thomas Smith? A. I had several conversations in those days. I don't remember each single one.

Q. You had known Mr. Smith since 1928, had you not? A. Yes.

Q. You were well acquainted with him? A. Yes. And I had several conversations with him on those days. To which one do you refer, Mr. Burling?

Q. To the conversation of October 22nd. You know you had a conversation with him around that time; is that correct? A. As I told you, several conversations.

Q. Thank you. And in the course of one of these, did Mr. Smith tell you that your father had communicated with him and said he would be willing to hold his Opel shares for a little more than five additional years, if General Motors would insert a gold clause in the escrow agreement? A. Yes.

Q. When Smith told you this, on or about October 993 22nd, did you tell him that that was impossible, because your father had already given away all his Opel shares? A. No, I didn't tell him so. And I had my reasons, as I explained to you yesterday. I had asked that my father would keep his secret?

Q. So you were dealing with Smith— A. Under the power of attorney, yes.

Q. And you knew that your father had told Smith that he, Wilhelm, would be willing to hold his, Wilhelm's shares, even though Wilhelm didn't have any shares to hold? A. I acted under the power of attorney at the time, and the escrow agreement still stood between my father and General Motors.

Q. Well, will you explain how your father could offer to hold his shares on October 22nd, if he gave away the last share he had on October 5? A. He wanted to assist me in getting a gold clause.

Q. So he, Wilhelm, offered to hold onto shares which he had already given away. Is that your testimony? A. No, Mr. Burling, that is not my testimony. You must read this wire, and you will see from this wire that he left it to me to make the decision.

Q. But the negotiations between your father on the one hand, and Mooney and Smith for General Motors for the other, looked to your father's retention of Opel shares? Isn't that so? A. General Motors was immensely interested in keeping at least 5 per cent away from a sale, yes.

Q. And, again, for perhaps the one hundredth time, I implore you to answer my questions.

Isn't it true there was a negotiation carried on, while you were in New York, between General Motors on the one hand and your father on the other, whereby your father was offering to hold, to keep in his hands, the Opel shares, even though you testify now he had given them away on the 5th? A. The decision was left to me.

Q. Will you please answer my question? Isn't that the situation? A. No, that is not the situation, Mr. Burling.

Q. Well, you have just testified, haven't you, that you knew your father had communicated with John Thomas Smith, offering to hold his, your father's shares? A.

That was only a way of speaking. I was acting on the power of attorney.

Q. I am not asking you how you were acting. Your father offered to hold his shares, didn't he? A. No; you imply something that isn't in it.

Q. Wait a minute. Didn't you testify a moment ago that Smith told you your father had offered to hold his shares for five additional years, in return for a gold 995 clause? A. The shares mentioned in the escrow agreement.

Q. Did you or did you not? A. You are implying something that is not in it.

Q. Didn't you testify just a minute or two ago—and please answer my question—

Didn't you testify that Smith told you that your father had offered to hold his, Wilhelm von Opel's shares, for five additional years? A. You must take the entire—

Q. Did you or not so testify, sir? A. I did not testify that these shares were my father's shares.

Q. I didn't ask you that. Didn't you testify your father offered to hold his shares? A. No. He left it to me.

Q. Oh, Mr. von Opel. Really you can answer my question. A. I can't answer this question. You are implying something which isn't in it.

Q. Whether or not I am implying something, or what inference should be drawn from this transaction, is a matter for His Honor, after argument by counsel. I just want to know now what the facts are.

The Court: I understood him to say, Mr. Burling—and it can be correctly by any of you if you want to—I 996 understood him to say that Mr. Smith told him around about that time that his father had said he would hold it a certain period of time if he could get the gold clause written into it. I understood him to say that.

Mr. Burling: Thank you, Your Honor. That is my understanding also, and I will go on without laboring it.

The Court: If it is something different, Mr. Gallagher can bring it out.

Mr. Burling: Yes; thank you, Your Honor.

By Mr. Burling:

Q. Now, after Mr. Smith told you this, you sent your father a wire dealing with this subject, did you not? A. That is possible.

Q. Do you remember what you said in that wire? A. No, I don't.

1009 Q. Now, did you have a conversation with Mr. Smith about an offer which your father made to hold his shares, in return for a gold clause? A. Yes, sir.

Q. Will you state, as best you can remember, what you said to Smith and what Smith said to you? A. He told me about this exchange of wires, and, if I remember correctly, about this telephone call.

And I told him that my termination of the contract made on October 17 would stand.

Q. You did? A. Yes.

Q. You did not tell him you would have to go back to Wiesbaden and talk to your father about it? A. No, definitely not.

Q. You are sure of that? A. It just meant sending a wire to my father telling him I would come to discuss it with him; that I had told Mr. Smith there was no way of getting this termination reversed.

Q. You are sure of that? You are sure you did not tell Smith that you would have to go back to Wiesbaden and discuss the problem with your father? A. Mr. Smith suggested that—

Q. But are you sure you told him you would not do that? A. I am sure I told him the termination would stand.

Q. By the way, you know Mr. Smith is dead, do you not?
A. I heard so about six weeks ago, yes.

Q. Now, you knew, did you not, that Mr. Smith on October 30 wired your father—and I am reading from Defendant's Exhibit 7.

You saw this wire? A. I have seen it later, yes.

Q. Didn't you see it when Mr. Smith sent it? A. No.

Mr. Burling: If your Honor please, this is already in evidence. It is a cable—

"Wilhelm von Opel, Wiesbaden, Germany.

"Your proposition in regard to one-half acceptable to us. Stop.

"Your son Fritz thinks he would like to confer with you about it further. Stop.

1011 "Sailing Europa, in Wiesbaden November 9."

By Mr. Burling:

Q. Did you tell Smith you would like to confer further with your father about his proposition? A. I told Mr. Smith I would explain to my father why I had cancelled, and why I would stick to it.

Q. Well, now, will you answer— A. And I further told him it was a ridiculous and silly proposition.

Q. But you did not tell him you wanted to confer further with your father about it? A. No, definitely not.

But I also say that Mr. Smith still hoped the deal could be made. They were all very much interested in keeping my father in the corporation.

Mr. Burling: I would like at this time, if your Honor please, to read Defendant's Exhibit 6, which is already in evidence. It is an incoming radiogram from Wiesbaden, addressed—

"Mr. Sloan, General Motors, New York City.

"Would like confirm position covered with Mr. Mooney. Stop. Personally would gladly continue connection and

seriously believe more in your interest regarding business here that I hold Opel stock than G. M. stock. Stop. Propose following basis: Quote: 'I keep fifty percent 1012 of my Opel stock until at least January first 1936. Stop. Having right to ask you then to purchase my stock at rate of Reichsmark'—

The Witness: Twenty-six thousand five hundred.

Mr. Burling: Thank you. The word seems to be in German—

"per share as provided in present agreement regarding stock. Stop. However you guaranteeing currency to the effect that the amount payable to me on January first 1936 is not less than goldmark 26,500 per share on local basis of one goldmark being equal to one two thousand nine hundred seventieth of one kilogram fine gold. Stop. For explanation quote should I sell to you today I would receive about same amount now as I ask you to guarantee per January first 1936.' Unquote. Should you at any time before January first 1936 decide to reduce stock capital of Opel such reduction should not affect total amount payable to me in case you purchase mo, m-o stock"—

I guess that is "my"—

"Stop. My son Fritz is authorized conclude on this basis. Kindest regards.

"Wilhelm von Opel."

And the date of that is October 23, 1931.

By Mr. Burling:

1013 Q. Did Mr. Smith show you this cable I have just read? A. It is possible he mentioned it.

Q. Did he show it to you? A. I can't recollect. It is possible.

Q. And did you in fact sail on the Europa, did you not, back to Germany? A. Shortly thereafter, yes, sir; I think around October 30.

Q. And Mr. Smith went with you to talk to your father.

didn't he? A. I don't know whether he went on the same boat. It is possible.

Mr. Burling: I offer in evidence a certified copy of portions of the manifest of the Steamship Europe, which sailed from the Port of New York, October 31, 1931, in so far as it relates to Fritz von Opel and John Thomas Smith, the original of which is contained in the records of the Immigration and Naturalization Service.

Mr. Gallagher: No objection.

(The document referred to was marked and received in evidence as Defendant's Exhibit 57.)

By Mr. Burling:

Q. Will you examine the second sheet of this exhibit, which is the passenger manifest of the Europa? A. Yes.

1014 Q. And see if you see your name. A. Yes.

Q. Now, do you see a column, in Column 6, which says "Country where you are going to live". Do you see that column? A. Yes.

Q. And what does it say for Fritz von Opel? A. It says "Germany ditto". It says where you were going to go.

Q. Where you were going to live, wasn't it? A. No. I did not make out this manifest, Mr. Burling.

Q. Did you ever tell that to any official? A. No.

Q. I show you the first sheet and ask you if you see there the name John Thomas Smith. A. Yes.

Q. And you remember Mr. Smith was on the board, don't you? A. It is possible. I don't recollect it. But he went back about the same time.

Q. And, did you not have conversations about your father's gold proposal while on the boat? A. That is possible, certainly. There were very much interested to keep my father in it.

Q. And you and Mr. Smith traveled together to 1015 Wiesbaden, didn't you? A. I don't know whether he went by the same boat I went. Anyway, we further on were at the same time in Ruesselsheim at the factory.

Q. And didn't you and your father and Mr. Smith have a discussion about whether he should keep either 300 or 600 shares of Opel stock in return for a gold clause? A. I told Mr. Smith that that deal was out; that I would not reverse the contract.

Q. Isn't it a fact that Mr. Smith was not told by anybody that that deal was out, until after you and Smith reached Wiesbaden? A. I had already terminated it, October 17. There was no reason to tell him anything further.

Mr. Burling: I offer in evidence, as admitted by the plaintiff, Defendant's Exhibit 58.

Mr. Gallagher: No objection.

(The document referred to was marked and received in evidence as Defendant's Exhibit 58.)

Mr. Burling: This is a cable, signed "Smith", dated November 10, 1931, and it is addressed to General Motors in New York:

"Bradley Geheimrat under Fritz's advice has withdrawn proposition to retain one-half. Stop. Settlement should be carried out pursuant to letters of instruction."

1016 By Mr. Burling:

Q. Now, isn't it true that after you and Smith reached Wiesbaden, you had a discussion with your father and told him that he should tell Smith that he would not go through with his proposal to hold onto the shares in return for a gold clause? A. I told my father I had terminated. I told him why I had terminated, that it was absolutely silly to go on at this low rate of interest, 28 per cent; and that I had no reason personally to do Gen-

eral Motors a favor, so that they could save taxes in Germany.

Q. And so your answer to my question is no, you did not tell your father or persuade your father to tell Smith that he withdraw the— A. There was no reason for me to—

Q. Fine. But will you answer my question, Mr. von Opel?—Isn't it true that your father, in your presence, told Smith that you had persuaded him to withdraw his offer? A. I don't get your question.

Q. Your father did not speak to Smith in your presence? Is that right? A. I don't remember that. I think, if I remember correctly, I told my father the termination was made, and he should tell the General Motors people that he reversed his former stand.

1017 Q. I see.

Now, your present testimony is, is it not, that when you arrived in New York you first asked that a gold clause be inserted. Then, on the 17th you found you could not get the gold clause inserted, so you sold the stock; you put the stock to General Motors.

And then later, around the 22nd, Smith told you your father had talked to Mooney and had cabled to him offering to hold a part of the shares, in return for a gold clause. Is that right? A. That is the way I understood it, yes.

Q. That is the sequence of events? A. I think the first event is, it may have been between October 15 and 17, that I asked General Motors to put in a gold clause.

Q. That is right. A. A gold clause for the full value.

Q. That is right. Well, didn't I state the sequence correctly Mr. von Opel?—

First, between the 13th and the 17th, you negotiated for a gold clause? A. Yes, sir; that is the way I remember it.

Q. On the 17th you put the stock to General Motors, and on the 22nd you had a discussion with Mr. Smith.

1018 A. I don't remember the dates of these discussions,

because I was in General Motors pretty nearly every day.

Q. But, at any rate, the discussion about your father's offer to hold the shares came after you put the shares to General Motors, wasn't it? A. That is the way I understand it. It is possible my father was in contact with them sooner than that.

Q. But you have no knowledge that that is not the way it happened? A. I don't; I don't recollect.

Q. Now, I want to read from folio 141 of your gold case affidavit:

"Within the next few days I left for New York. Upon arriving in New York in October, 1931, I entered into negotiations with John Thomas Smith, vice president and general counsel of General Motors Corporation, in New York, for a modification of the escrow agreement, Exhibit Q, so as to place the Reichsmarks payable thereunder on a gold or gold equivalent basis. I received no definite answer on this proposal, but after several days I was told by Mr. Smith that my father had agreed by cable with Mr. Sloan, president of General Motors Corporation, to modify the escrow agreement so that the price of 300 shares of Opel Motor Works stock, that is one-half the total number,

should be payable in Reichsmarks on a gold or gold 1019 equivalent basis. On receiving this news from Mr.

Smith, I considered the matter for a while and then told Mr. Smith that I did not agree and would call for payment under the escrow agreement in the exercise of my rights as attorney-in-fact. I then cabled my father stating in substance what I had done, giving my reasons, and adding that I should discuss the matter with him on my return to Germany.

"On or about October 17, 1931, I gave written notice to General Motors Corporation of my election to deliver to it the shares described in the escrow agreement, Exhibit Q, at the price therein stated," and so on.

Now, in your gold case affidavit you indicate that the discussions with Smith about your father's proposal came before you put the stock to General Motors, and not after.

A. No, sir. Will you please read that again?

Q. Well, your counsel can read it. I have read it once.

A. That is not covered.

Mr. Gallagher: Your Honor, I think the witness is entitled to have a copy of this before him, instead of trying to follow all the reading.

The Witness: Well, I follow it.

1020 The Court: He has asked him a question, and he has answered it.

The Witness: May I answer your question, Mr. Burling?

By Mr. Burling:

Q. Please do. A. On the gold case affidavit, it stated I negotiated on the gold clause, and a few days later my father made another proposal, which is absolutely correct. You stated my father made this proposal around October 22. And I negotiated with them on the gold clause between 15 and October 17, when I cancelled. So there are several days in between—five days.

Q. In any event, you are clear you never told John Thomas Smith about the gift, aren't you? A. I am rather sure, yes, sir. But as I told you yesterday, for a time I was under the impression that it was John Thomas Smith and not the National City Bank with whom I had talked about the technicality of substituting me in the escrow agreement.

Q. You did say in the New York interrogation in 1946, did you not, as follows:

"And I asked General Motors whether they would prefer to work under the gift agreement or under the power of attorney, and they answered that the gift agreement would require a long time to check into and to properly
1021 establish my rights under it. So it would be much

simpler if I would act under the power of attorney, which I did."

A. That is correct. At this time I had not seen the wire yet which I sent from the steamer to the National City Bank. I thought at the time I had sent this wire to General Motors.

Q. All right. Now, in 1931, you purchased all of the shares of Uebersee Finanz-Korporation from Adler and Company, did you not? A. Yes.

Q. And the entire purchase price was derived from the proceeds of the Opel shares? Is that right? A. Yes.

Q. Do you know a man named Theodore Hoffacker? A. Yes.

Q. You knew him in 1931, didn't you? A. Yes, I think I met him for the first time in 1922.

Q. And he was an investment counsellor, was he not? A. In New York, yes.

Q. And he had a company called Theodore Hoffacker Company, is that right? A. Yes.

Q. And did you arrange that the proceeds of the Opel shares were to be invested and managed by Hoffacker 1022 & Company? A. Yes, I had a contract with him of this kind. I don't remember the details. I think he operated this account.

Q. And he bought and sold securities for Uebersee? A. Yes.

Q. In 1932 and 1933? Right? A. Yes, it is possible.

Q. And in the spring of 1932 you authorized Hoffacker to acquire the majority interest in an American corporation called Spur Distributing Corporation, didn't you? A. In the spring of 1932?

Q. Yes; wasn't that when it took place? A. Yes, it is possible.

Q. I am not asking you whether it is possible, I am asking you if that is not when it happened. A. I think prior to this time I had already acquired about five or ten thousand shares. And later on I acquired the majority. That is correct.

Q. But you completed the acquisition of the majority in the spring of 1932? A. I completed—that is the right word, yes.

Q. And you knew at that time Spur operated a string of gasoline filling stations? A. Yes.

Q. And didn't you then cause Uebersee to give Hoffacker proxies so he could vote the Spur stock? A. Yes

1023 Q. And do you not know that Hoffacker then voted himself in as vice president of Spur, and put a person named von Klemm, and another person in the office, on the board of directors? A. He was from Hallgarten & Company from which I acquired the majority. I am speaking about Mr. von Klemm. I bought the first stock of Spur from Mr. von Klemm.

Q. I see. And you have attended neither a stockholders or directors meeting of Spur? A. It is very difficult for me to tell you that offhand. I would have to check my records.

Q. You have no present recollection of having attended such a meeting? A. I think directors meeting. I attended several of them, because I was always on the board of directors of Spur.

Q. You were always on it? A. I think so. At least, I think I went on the board in 1934 or 1935, and remained on the board, I think, until about 1941.

Q. And you didn't meet the president of Spur until the summer of 1934, did you? A. That is possible. I met him some time after the majority was acquired.

Q. And you first met him in Paris? Is that right? 1024 A. What do you say?

Q. You first met him in Paris? Is that right? A. Mr. Houghland?

Q. Yes. I do not recollect it; and I rather doubt it.

Q. There isn't any doubt that the president of Spur from the time you acquired it, from the time it was vested, was Mr. Mason Houghland? A. Always the same president, yes.

Q. And that was Mason Houghland? A. Yes.

Q. Thank you. A. But that doesn't mean I met him in Paris.

Q. Where do you think you first met him? A. I think I first met him here in America.

Q. Well, where? A. It is possible that he came to New York. It is also possible I met him first in Nashville, Tennessee, where the headquarters of the corporation are.

Q. Of course, it is possible; but which do you think it was? A. After seventeen years, I really couldn't tell you that.

Q. At any rate, at one time you did meet Mr. and Mrs. Houghland in Paris? Isn't that so? A. I do not
1025 recollect it. Of course, it is possible. If you give me the year—

Q. It is 1934 I am talking about. A. And I can refresh my recollection. Of course, it is possible.

Q. 1934, it is possible. Well, perhaps I can refresh your recollection a little more. Didn't you call for Mr. and Mrs. Houghland and take them to a very good restaurant in Paris, and then take them to the Folies-Bergere? A. It is absolutely possible.

Q. And at any rate you do not recall having any business discussion— A. I do not recollect it.

Q. You do not recall having any business conversation with Houghland in Paris, do you? A. In which respect? Would you refresh my recollection?

Q. I say, you did not have—I can't refresh your recollection as to what you did not do.

Isn't it true you did not have any business discussions with Houghland in Paris? A. It was fifteen years ago, and I just told you I didn't even remember I met him in Paris. How could I make such a statement?

Q. The answer, apparently, is no. Is that right?
1026 A. I could not say I had no business discussion with him.

Q. The question is, you don't now recollect any? A. I don't recollect any business discussion right now.

Q. Thank you. You have spent a great deal of time, haven't you, in the past five years, trying to recall all of the aspects of your relations to Mr. Houghland? A. During the past five years?

Q. That is right. Haven't you thought a great deal about your relations with Mr. Houghland? A. You had better turn it the other way, Mr. Burling.

Q. Well, if there is some other question to be asked, your counsel could ask it. I ask you this question. A. I found out that he was disloyal to me.

Q. I am not asking you that. I am asking you a yes or no question—

Haven't you spent a great deal of time thinking about your relationship with Mr. Houghland? A. No, Mr. Burling.

Q. You have not? A. I have better things to do than thinking all day and night about Mr. Houghland.

Q. You haven't talked to your lawyer at great length about Mr. Houghland? A. Within the last two or 1027 three weeks, yes.

Q. Haven't you tried to go back over all the transactions you and Mr. Houghland had together? A. Certainly. We even made a motion in court in this respect.

Q. Fine. Isn't it true that the first time you saw Houghland in Nashville was in 1935? A. That is possible. I was in Nashville several times. I should say offhand about three or four times.

Q. But, at any rate, from 1932 until 1935, it is true, is it not, that you let Hoffacker manage your investments in Spur? A. I wouldn't say that. I supervised the activities of Mr. Hoffacker.

Q. But Hoffacker supervised Spur? Is that right? A. I don't know the exact year when I went to the board, you see. But, for instance, I remember that in 1933, or even 1932, it was shortly after I had acquired the majority of Spur, I gave Mr. Houghland a seven years contract.

Q. But you hadn't met Mr. Houghland at that time, had you? A. I would rather say that I must have met him somewhere, because it is very unlikely that I would have given him a contract without meeting the man first.

Q. Whether or not it is unlikely, the fact is you
1028 had never met him before you gave him the contract, did you? A. I never made such a statement. I said I did not recollect it.

Q. Do you recall meeting Mr. Houghland prior to or at the time you gave him the contract? A. I do not remember that, but it is very likely that I saw him.

Q. That is an argument which your counsel can make to His Honor. A. Pardon me.

Q. But you have no recollection— A. I have no recollection, no.

Q. Thank you. Now, will you state whether or not Hoffacker didn't say to you in 1932 that since Spur is a gasoline retailing enterprise, it would be profitable to invest some of your money in properties producing gasoline, that is to say, oil wells and refineries? A. Yes, we had discussions along this line, and I actually did do it.

Q. And Hoffacker commissioned the Crittenden Engineering Company to prepare a report on available oil properties, didn't he? A. I remember that, yes.

Q. And he then invested about four hundred and fifty
1029 thousand dollars of Uebersee money in oil properties, did he not? A. Yes, I think so.

And the way this was done was to incorporate Oil Production, Incorporated? Isn't that true? A. I think that was the name, yes.

Q. And Hoffacker became president, and a man named Crittenden became the vice president of that company? Isn't that so? A. Yes, to the best of my recollection.

Q. And then Oil Production, Inc. made a management contract with Crittenden whereby Crittenden was to manage the property? Is that right? A. That is not quite correct. I think the management contract was made with Mr. Grogan and Crittenden.

Q. G-r-o-g-a-n? A. G-r-o-g-a-n, yes, sir.

Q. Crittenden and Hoffacker also incorporated a thing called Oil Refineries, Incorporated? A. Yes, I think so.

Q. And invested \$95,000 of Uebersee money in purchasing a small refinery? Isn't that correct? A. In East Texas.

Q. When did you first meet Mr. Crittenden? A. That must have been around this time.

Q. You didn't supervise the activities of Crittenden, did you? A. No; he was a chemical agent here and he was running the refineries.

Q. But Hoffacker was watching your investment in this property, was he not? A. Yes.

Q. And Hoffacker also put Uebersee money in a brewery in Lowell, Massachusetts, called the Harvard Brewing Company? Is that correct? A. I think the deal was originally made through Haligarten & Company, in New York.

Q. But Hoffacker became the president of Harvard Brewing Company? A. After I acquired the majority. He wasn't the first president. There was first another president. In the beginning, if I remember correctly, I had only 30 or 40 per cent, and the rest was held by clients of Hallgarten; and in the years to come I then acquired majority.

Q. Well, in those early years, Hoffacker supervised your investment in the brewery? Is that right? A. Not he alone. I also had other people in it. For instance, my accountants were represented, partly as officers and partly as directors.

Q. I see. How many times did you see Crittenden at the time you started to invest money in oil properties? A. Before I invested it?

Q. At the time. A. At the time—I saw Crittenden, I should say offhand, not more than four times in my life.

Q. Will you identify the four times you saw Crittenden in your life? A. I think I saw him in Overton, East Texas;

and I can even give you the time, because this terrible explosion had happened where 500 children had gotten killed.

Q. That is the New London school disaster you refer to? A. Yes. About this time I came, for the first time, I think it was—but I am not quite sure on that; it is so many years ago—but I think that is the first time I came into East Texas.

Q. And that is the first time you met Crittenden? A. I am not sure. The headquarters of the corporation were in Shreveport.

Q. In Shreveport, Louisiana? A. In Shreveport, Louisiana, and it is possible I had been in Shreveport.

Q. You saw Crittenden at the time of this disaster. What are the other three times you saw him? A. I saw him several times.

Q. Well, tell us about each occasion on which you saw him, will you please? A. I can't do that, Mr. Burling.

Q. Well, do the best you can, will you please? A. I was in Shreveport several times, and in the East Texas field, if I remember correctly, only once; and I think I met him in New York.

Q. Did you ever meet him in any foreign countries? A. Oh, I traveled with him over to Germany when we wanted to acquire this Burgess process.

Q. The what process? A. The coal-into-gasoline process.

Pardon me; no, it wasn't the Burgess process. It was too expensive. It was the process called—I forget the name of this process. It was a competing process to Burgess, and Crittenden thought we could use it to make gasoline out of natural gas.

Q. Did you on any other occasion see Crittenden in any foreign country? A. I don't recollect that.

Q. You spent two weeks with him in Zurich, didn't you? A. With Crittenden?

Q. Yes. A. I do not recollect that. At what time?

Q. Did you ever spend two weeks in Zurich with Crittenden, in the same hotel?—and I will identify the 1033 hotel as the Baur au Lac? A. I think the Crittenden family traveled through Switzerland, and it is possible I met them in their traveling.

Q. You spent two weeks in a series of business discussions with Crittenden in Zurich, did you not, at the offices of Hans Frankenberg? A. No.

Q. You deny that? A. I can't remember that, because there was nothing besides technical matters I had to discuss with Mr. Crittenden.

Q. And you also saw him in Montreal, didn't you? A. Yes, I remember that. He came up to Montreal. I think that must have been in 1935 or 1936.

Q. Wasn't it June, 1936? A. Yes, that is possible, yes.

Q. You and Frankenberg were in Montreal together at that time, weren't you? A. No, I don't remember that. I think Mr. Kressel, my lawyer, was there.

Q. Wasn't Frankenberg there? A. It is possible, but I think Mr. Kressel was there.

Q. Who did you see while you were in Montreal? A. At this time I wanted to immigrate to the United States.

Q. I didn't ask you what you wanted to do, Mr. 1034 von Opel; I asked you who you saw at Montreal.

A. I just tried to refresh my own recollection.

Q. Please think, and then tell us who you saw in Montreal. A. I think Mr. Kressel was there. I think he had even taken his wife along, if I remember correctly. And some of my accountants were there.

Q. How about Mr. Guyette? Was he there? A. That is possible, yes.

Q. And how about Mr. Houghland? A. Mr. Houghland, I don't recollect. It is possible.

Q. Will you state why you were in Montreal at this time? A. Because at this time my lawyer, Kressel, advised me not to enter into the United States, on account of this nuisance suit.

Q. That is, you didn't wish to be served with a summons and complaint, in a lawsuit? Is that right? A. Yes, this nuisance suit of Cole.

Q. Isn't it the fact that you had Guyette, who was also at that time the head of Harvard Brewery— A. Yes.

Q. —come up for a day? A. That is possible. All my business associates I think were there for a few days.

1035 Q. Now, did you at any time after October 5, 1931, did you or any member of your family own a house at Kampen, on the Island of Sylt? A. No, sir.

Q. Did you or any member of your family rent a house during the period I have specified, at Kampen? A. My wife had rented a cottage there, a small two-room cottage.

Q. What was the name of the cottage? A. I don't remember that. She was very sick at the time, and her physician had told her to go to the seaside for a cool place.

Q. When did this take place? A. I don't remember the year exactly.

Q. What is your best judgment as to the year in which your wife was so ill? A. I can't recollect the date.

Q. Now, will you state whether or not it is correct that in August, 1937, you learned that Mr. Houghland and his family were in Europe on a pleasure trip? A. Mr. Houghland went to Europe quite frequently for horseback riding, yes, sir.

Q. I didn't ask you why Mr. Houghland went to Europe. I asked you if you learned he was in Europe in August, 1937. A. That is possible.

1036 Q. Is it not the fact that you wired him in August, indicating a desire to meet him in Europe? A. It is possible. He came there frequently.

Q. I show you Defendant's Exhibit 59 and ask you if that is a cable you sent Houghland? A. That is possible.

Q. It bears the signature "Fritz von Opel, Kampen, Sylt", does it not? A. Yes.

Q. Doesn't that refresh your recollection as to whether you did or did not send this? A. Yes; I think I sent it, yes.

Mr. Burling: I offer it in evidence.

Mr. Gallagher: No objection.

(The document referred to was marked and received in evidence as Defendant's Exhibit 59.)

By Mr. Burling:

Q. And then you sent him another wire asking him to meet you Hamburg? Isn't that right? A. Where, please? I didn't get it.

Q. Hamburg. A. Yes.

Mr. Burling: I ask that this piece of paper be marked.

(The document referred to was marked for identification as Defendant's Exhibit No. 60.)

1037 Mr. Burling: If Your Honor please, this is on a telegraph form, which has some gaelic, which I am unable to read. I therefore intend to offer the document only in so far as there is English written on it.

The Witness: What is it?

By Mr. Burling:

Q. I ask you, Mr. von Opel, is that a copy of a cable which you sent Houghland? Perhaps I can read it to you, if you have difficulty in reading it. A. Yes (returning the paper).

Q. The address indicates redirected at Wicklow, and then an illegible number; then "Houghland", and then the name of a hotel, an Irish name which I am unable to pronounce. The message is:

"Would your plans permit seeing me in or new Hamburg any date after August 25."

Then I take it the next is in French, the words "Beaucoup, B-e-a-u-c-o-u-p, de d-e, planir, p-l-a-n-i-r"— and then "regards, Opel, Zurich, Dolder Hotel."

Does that refresh your recollection as to whether you sent this message? A. Yes; I think I sent it.

Mr. Gallagher: What is the date, please?

Mr. Burling: The date is August 4.

Mr. Gallagher: What year?

1038 Mr. Burling: 1937.

I offer that in evidence, Your Honor.

Mr. Gallagher: No objection.

(The document referred to, previously marked for identification Defendant's Exhibit 60 was received in evidence.)

By Mr. Burling:

Q. And then you subsequently sent him a letter; did you not, dated August 23, 1937? A. Around the same time?

Q. August 23, 1937.

I show you Defendant's Exhibit 61 and ask you if it is a letter signed by you. A. It is my signature, yes. May I read it?

Q. Certainly (handing the letter). Will you examine the letter and state whether it is not a letter which you wrote to Houghland?

Can't you tell whether that is a letter you wrote to Houghland? A. Yes; I would like to read it to refresh my recollection.

Q. Are you unable to tell whether you wrote that to Houghland? A. No; but you might ask me questions, and

I would like to read it.

1039 Q. If you will let me have it, I will read you any portions I want to ask you about.

Mr. Burling: I offer it in evidence.

Mr. Gallagher: No objection.

(The document referred to was marked and received in evidence as Defendant's Exhibit 61.)

By Mr. Burling:

Q. I want to read you the first paragraph:

"Many thanks for your cable informing me about the trip you intend to take to Tyrol. I hope very much you enjoyed the journey you had and that your route took you from Frankfurt or Mainz either through the Black Forest (Baden-Baden and Freudenstadt) or via Rothenburg and Nuernberg, where the Party-Congress is just being prepared."

Did you write that? A. Yes. I gave him on two pages suggestions how he should travel, and he was very much interested to see all what he could see in Switzerland, Italy, Germany, and so on.

Q. Including the Party-Congress in Nuernberg? A. Yes; many Americans went there because they wanted to see it.

Q. Now I want to read you the last paragraph on page 2:

1040 "A fortnight ago I had a conference with Crittenden and Bayer in Zuerich."

Does that refresh your recollection as to whether you had a conference with Crittenden in Zurich? A. Yes; I recall Crittenden and Bayer, my accountant, were on a visit in Zurich.

Q. Do you now remember you had a conference in Zurich? A. Yes.

Q. Finally you send Houghland a wire asking that he meet you in Hamburg, Germany, on the 14th of September, 1937? Isn't that correct? A. I don't recollect it. If you show me the cable, I think I can identify it.

Q. All right; I show you Defendant's Exhibit 62. Did you send that wire? A. Yes.

Mr. Burling: I offer it in evidence.

(The document referred to was marked and received in evidence as Defendant's Exhibit 62.)

By Mr. Burling:

Q. What business did you expect or at the time discuss with Houghland in Hamburg? A. Business in general.

Q. Well, what business? A. The Spur Distributing business.

1041 Q. Did you expect to discuss any other business with Houghland in Hamburg? A. I had no other business with Mr. Houghland.

Q. You did not intend to discuss any other business with Mr. Houghland; but the selling of gasoline by Spur Distributing? Is that right? A. Yes; it was the same topic of our conversation.

Q. Did you intend to discuss any other business with him? A. How can I recollect that after ten or twelve years, Mr. Burling, what I in this time intended to discuss with him?

Q. Why did you select Hamburg as a meeting place? A. Because that was the place, I think, where he wanted to board the ship. He either spent most of his time in Ireland; so I thought it would be convenient for him to either to come in to Hamburg or go out from Hamburg.

Q. Is it not the fact that you wanted Houghland to come to Hamburg because you wanted to discuss the question of investing in a German synthetic rubber proposition? A. With Mr. Houghland?

Q. Yes. A. That is fantastic.

Q. Well, whether or not it is fantastic, is it correct or incorrect? A. It is incorrect.

1042 Q. Did you tell Houghland you were interested in producing synthetic rubber tires, and you wanted to know what he thought of the possibility of selling them through the Spur stations? A. He at the time—

Q. Did you or did you not say that? A. You are mixing up two things. We discussed the tire business in Spur. But I certainly didn't propose anything so fantastic as the business of exporting German tires to America. That could not be done.

Q. Did you speak of acquiring a German process for manufacturing synthetic rubber? A. No.

Q. Did you ask Houghland to inspect anything? A. Houghland is not a mechanical engineer or a chemist.

Q. Whether or not he is, did you ask him to inspect anything? A. You mean anything in a technical line?

Q. Yes, in Hamburg, Germany. A. In Hamburg, Germany, I cannot remember that.

Q. Didn't you ask him to go with you to inspect a truck which had been equipped with synthetic rubber tires and had been run many thousands of miles, to show him how satisfactorily the tires had held up? A. It is possible that I showed him a truck. I mean, every American is interested in those things.

Q. You have no recollection, however, of having asked him to go with you to a place in Hamburg and inspect the tires on a truck? A. I don't even recollect that I met him in Hamburg. If you will give me the name of the place, or where I went with him, I then would be in a position to answer that question intelligently.

Q. But you have no recollection at the present time? A. No. Of course, it is possible that I discussed synthetic tires with him. They were just coming out; they were new on the market, and it is possible he asked me about it.

Q. Now, you now recall having seen Crittenden in Zurich in 1934; don't you? A. Yes, but not, as you say, for fourteen days. He might have been there fourteen days. I certainly saw him only occasionally, because we had very little to discuss.

Q. You had been dealing with Crittenden in Germany earlier that same year, hadn't you? A. He went there—

Q. Where? A. I think it was Mr. Hoffacker, if I am not mistaken, Mr. Crittenden, and another American who was head of or one of the biggest builders of refinery equipment.

Q. What was his name? A. I forget the name. It was quite a big concern.

Q. Was it Koch?—K-o-c-h? A. That is possible; yes.
 It sounds familiar to me.

Q. When did you first see Crittenden in Germany in the year 1937? A. If I remember, they went to Berlin.

Q. Where and when did you first see Clittenden? A. I do not recollect that.

Q. Wasn't it in Berlin in the spring? A. That is possible.

Q. And Crittenden had gone to Berlin at your request; had he not? A. No; it was vice versa. He thought it was a big chance getting some "dope", as you say technically, on some German process which we could then in turn employ for our refineries in Texas and Louisiana.

Q. I see. And the process was being experimented with or on by a German company called Ruhr Chemie? Is that right? A. That is correct. They had this big experimental plant, yes.

Q. And you had been requested to get in touch with the officials of Ruhr Chemie, so that Crittenden and
 1045 Koch could inspect the process? Is that right? A.

Yes. There were two processes, Burgess and this Ruhr Chemie process, and Crittenden thought the Ruhr Chemie process was a more practical one for America.

Q. The name of the process was the Fischer Tropp process? A. Yes, the Fischer Tröpsch, isn't it?

Q. I see. And isn't not the fact that Hoffacker, Crittenden, and Koch met you in Berlin? A. That is possible. I think they went first to Berlin, and from Berlin we went to the Ruhr to inspect this plant.

Q. They met you, and all four of you stayed at the Bristol while in Berlin, for about a week? Isn't that so? A. That might have been.

Q. And during this time you were seeking to arrange meetings between the Ruhr Chemie officials and Crittenden, Hoffacker and Koch? Is that right? A. That is possible.

Q. And is it not the fact that you four men then went

to Essen? A. I think it was near Essen where this plant was.

Q. But you stayed in a hotel at Essen, did you not?

A. Well, we had to stay somewhere. We stayed there a day or two; I think so.

1046 Q. Wasn't it closer to a week you stayed in Essen?

A. I don't recollect. We inspected the plant, and I think I can say what Mr. Crittenden's impression was. He thought it was just peanuts.

Q. Fine. But I didn't ask you that, Mr. von Opel. Just answer my questions. A. Your question was how many days we spent?

Q. Yes. A. If I recollect that correctly, only a very few days. I think we only went to the plant, I think, once or twice.

Q. You made several trips between Essen and the plant, which was at Oberhausen, did you not? A. That is very close to Essen, yes.

Q. I didn't ask you how close it was to Essen. I asked you if you made several trips between Essen and the plant at Oberhausen? A. Yes, I think the plant was there.

Q. I didn't ask you whether you thought the plant was there, either. I asked you didn't you make several trips between Essen and Oberhausen? A. That is most likely.

Q. And you made them by automobile, did you not? A. That is the easiest way to go there, yes, sir.

Q. And I didn't ask you what was the easiest way to go there, either. Just answer me. A. Yes.

1047 Q. And isn't it true that the Ruhr Chemie people stated they were not in a position to give you or Crittenden final word as to whether they were to give you a license on the process? A. If I remember correctly, Mr. Crittenden immediately thought that the process was much too expensive. And, of course, they were eager to license an American firm.

But, if I remember correctly, their demands were so far out of any possibility, that nothing came out of it of any sort.

Q. Now, on the occasion of your last return from Oberhausen to Essen, is it not true that you and Hoffacker got into a fight in the automobile? A. What do you mean by "fight"?

Q. Into a quarrel. A. Of course, that is different. A fight is some boxing.

Q. I will come to the boxing.

Did you first get into a quarrel in the car? A. If you refresh my recollection, I had quite a number of quarrels with Mr. Hoffacker. That is the reason I dismissed him.

Q. Well, on this occasion didn't you have the chauffeur stop the car, and didn't you and Hoffacker get out, 1048 preparatory to this boxing? A. I don't remember this incident.

Q. Do you remember that after you returned to Essen, Hoffacker went off by himself, and you asked Crittenden to have dinner with you? A. That is possible.

Q. And on this occasion, did you not tell Crittenden 1049 that your father had caused reports to be prepared on Hoffacker, on Crittenden, and on another business associate of yours? A. I don't remember that.

Q. Do you think you did or did not tell this to Crittenden? A. Oh, I now remember, one of the General Motors people—I don't recall the name—had heard about my connection with Mr. Hoffager, and he had at the occasion of the visit in Germany given my father, made some remarks to my father about Mr. Hoffager.

Q. I see. Did you tell Crittenden this in a hotel in Essen in 1937? A. And I think I told Mr. Crittenden that I had gotten a financial statement on Mr. Hoffager, and his dealings, and that it looked not too rosy.

Q. You did not say that your father had done this A. No.

Q. Did you say that your father had prepared reports on Crittenden? A. No.

Q. You did not tell Crittenden? A. My father did not even know the name Crittenden.

Q. Did you tell Crittenden on this occasion that your father was very angry with you, because you had intrusted Uebersee's business affairs to Hoffager? A. No.

1050 Q. You had no such conversation? A. No.

Q. You did not tell Crittenden that your father was satisfied with the report that he had received—your father—on Crittenden? A. As I told you before, my father didn't even know the name Crittenden.

Q. The answer to that is no, then, is it? A. No, definitely—yes.

Q. Is it not a fact that you told Crittenden on that occasion that you were administering your father's funds? A. Definitely not.

Q. You are absolutely sure of that? A. Absolutely sure.

Q. I am glad to get a clear answer. Did you not tell Crittenden in Essen that in return for your administering your father's funds you were entitled to keep a part of the proceeds? A. No, definitely not.

Q. Did you have any conversation with Crittenden along this line? A. Definitely not. With Crittenden I had merely technical conversations.

Q. After you left Essen, where did you personally go? A. I don't recollect that.

Q. Did you not go to Berlin? A. If you would refresh my recollection.

Q. I am refreshing your recollection. Did you not go to Berlin? A. That is possible.

Q. At a time thereafter, did you and Frankenberg discuss a plan to merge Oil Production, Inc., and Oil Refineries, Inc. with an outside refinery named Rodessa? A. I had two refineries.

Q. Did you have such a discussion with Frankenberg?
A. I don't remember any details.

Q. Can't you answer me yes or no, did you have such a conversation with Frankenberg? A. About merging my three refineries?

Q. Yes. A. You must give me the date, first, because—

Q. In the summer of 1937. A. I don't know when I acquired the Rodessa refinery, and therefore I cannot tell you—I had two small refineries in East Texas.

Q. Did you ever have a conversation with Frankenberg on this subject? A. That is possible.

Q. Did you and Frankenberg not decide to call a 1052 conference in Zurich on this subject, and did you not decide to call Crittenden over to Zurich to discuss this? A. There was no need.

Q. Did you or did you not? A. I do not think so. He was a technical head here, he had nothing to do with financial matters.

Q. Will you please stop volunteering and try to answer my questions. Now, the auditors of the various corporations in America which Uebersee held at this time were Bayer and Clauson, is that right? A. They were my accountants, they are certified public accountants, and they were doing all my business.

Q. The answer to that question would have been yes? A. Yes.

Q. And you decided to send for Bayer, of the firm Bayer & Clausen, at this time, did you not?

Mr. Ingoldsby: Where is this, now, at what time?

Mr. Burlingame: Zurich, summer of 1937.

The Witness: I do not recall that I asked Mr. Bayer to come to Zurich for this purpose, because it would have been a tremendous expense, but it is possible that at the occasion of Mr. Bayer's trips to Europe that he stopped in Zurich and we discussed financial matters.

By Mr. Burling:

Q. You did not call a conference in Zurich to be 1053 attended by Frankenberg, Bayer, Crittenden, and you? A. You mean call Mr. Bayer from New York for the purpose of this conference?

Q. Yes, that is what I mean. A. I don't think so, because that is not the way I did business. It would have cost a lot of money.

Q. If you did not do it, do you know whether Frankenberg did it? A. I don't think so.

Q. In July, 1937, you stayed at the Hotel Baur-an-Lac, is that correct? A. Yes, that is possible.

Q. And Mr. and Mrs. Crittenden, and Mr. and Mrs. Bayer also stayed there? A. Yes, that is a place I recommended to them.

Q. And is it not a fact that the discussions of merger went on in Zurich for about two weeks? A. That sounds rather fantastic to me, Mr. Burling, because if I wanted to merge, all I would have to do is to give the orders.

Q. Is the answer not no? A. It is possible that before they went on their trip that we had a discussion, and after they came back, but certainly it sounds—

Q. Weren't the Crittendens and the Bayers in 1054 Zurich for a period of two weeks, during which off and on you had conferences in Frankenberg's office?

A. Now you say off and on, that is different. I only object to the implication that for 14 days we were discussing this tiny matter. Off and on, certainly that is possible.

Q. Did you not have conferences extending over a period of two weeks? A. It is possible that within a period of two weeks we had several conferences.

Q. And these were held in Dr. Frankenberg's office, is that right? A. In the office of the Adler Bank.

Q. It was in Dr. Frankenberg's private office, was it not? A. No, it is a conference room of the Adler Bank.

Q. I will try to refresh your recollection. Do you remember that Dr. Frankenberg has a Degas collection of paintings in his private office? A. They are owned by the Adler Bank.

Q. Where are they? A. They are in the conference room of the Adler Bank.

Q. During these discussions was it not said that a million dollars additional capital should be put into the merged companies? A. That was what Mr. Crittenden 1055 wanted. He was quite a great spender in refining.

Q. Didn't you and Frankenberg say that you thought that you would do that? A. That is not very likely. Mr. Frankenberg was always against my investing in refineries. He always said it was too big and too risky a job, and he was right in the end.

Q. When the conferences were finally over, is it not a fact that you and Crittenden walked out of the building and walked down the street together? I will try to refresh your recollection. Did you not say on that occasion that you were very glad that Frankenberg had agreed to Crittenden's proposals? A. That seems very unlikely to me, because Dr. Frankenberg always was against all these investments in refineries.

Q. Was it not agreed at the end of the conference that you and Frankenberg together would come to New York in the fall of 1937 to discuss further the merger of the refineries? A. That is possible, though not very probable.

Q. At any rate, you and Frankenberg did come to New York in the fall of 1937, did you not? A. It is possible. I don't recollect the occasion, but I came to America quite often, at least once or twice a year.

Q. And is it not true that in the autumn of 1937 1056 you and Frankenberg and Mr. and Mrs. Crittenden had dinner together at the Plaza Hotel in New York?

A. That is possible, that's where I always lived.

Q. And that is where Frankenberg is customarily staying, isn't it? A. No, he has always stayed at the Ritz-Carlton.

Q. In 1937 he stayed in the Plaza, did he not? A. I can't recollect that.

Q. This dinner was purely a social event in which no business was discussed? A. If a lady is present, one does not discuss the merger of refineries.

Q. And you didn't, did you? A. It is very unlikely.

Q. In fact, you personally did not engage in any business conversation with Crittenden in New York in the fall of 1937, did you? A. I wouldn't make such a statement, Mr. Burling.

Q. Did you or didn't you? A. If I met Crittenden, I certainly discussed our refinery problems. They were difficult enough, and it was very likely that whenever I met him personally, outside of a party, that I discussed business matters with him.

Q. Did you have any business discussions with him 1057 in New York in the fall of '37? A. If I met him there, if he was there and if we met, we certainly had business discussions.

Q. You recall that he was in New York, because you testified that you had dinner with Crittenden and his wife at the Plaza, did you not? A. That is what you stated, and I told you it was possible that we had such a party.

Q. You don't know whether you had any business conversations with him in New York or not? A. I didn't say I don't know. I said the opposite. I said it is very likely that whenever we met we discussed those urgent problems of the refinery.

Q. Is it not a fact that Frankenberg told you that he, not you, had had a talk in the afternoon before this dinner, with Crittenden, and that he, Frankenberg, had told Crittenden to go ahead and consolidate the oil companies; is that not the fact? A. That sounds very unlikely, because I was the one who made the decisions, and Dr. Frankenberg was against investing any more money into the refineries.

Q. Did you ever suggest to Crittenden that he defraud the United States? A. That he—?

Q. That he defraud the United States.

Mr. Ingoldsby: I object to that question.

1058 The Witness: Definitely not.

Mr. Ingoldsby: All right.

By Mr. Burling:

Q. Did you not in fact make that suggestion to him, and did he not reply to you that you had no idea of the long arm of the United States Government? A. I do not recollect that. And I think it is quite an impossible statement for me to make, Mr. Burling.

Q. Under the management contract you had with Crittenden, he was entitled to keep a percentage of the profits, is that correct? A. Mr. Koch and Crittenden, I think they had formed a partnership, and they got, if I remember correctly, a certain percentage of sales and also a share in the profits.

Q. Did you not suggest to him that he should not take out this percentage, but remit the entire profits to Switzerland, and that you would then arrange to take his share, to have his share of the profits deposited in Switzerland, and in that way he could avoid the United States income tax? A. I don't recollect to have made such a statement, but what I suggested to him was that he should not draw out his profits but leave them in the corporation and take shares for it.

Q. You said nothing about making deposits to his credit in Switzerland, which would get around the United States income tax? A. I had no interest in—

1059 Q. Did you say anything like that? A. No, I don't think so.

Q. Going back to the Plaza Hotel in the fall of 1937, did not Houghland also confer with Frankenberg at the Plaza?

A. I think he never conferred with Dr. Frankenberg alone, without me or anybody else present.

Q. Did he confer with you and Frankenberg at the Plaza in the fall of '37? A. That is different, that is possible.

Q. The fact is, is it not, in 1937 Houghland had a proposal to set up a series of small subsidiaries, to run smaller-sized gasoline stations? A. If I remember correctly, at this time Mr. Houghland was concerned about a certain chain store taxation, and I think it limited the number of Spur filling stations in various states, and he at this time felt he couldn't expand freely enough, and he thought that Spur, or as the stockholders of Spur, should form several other units. And I think it was done in one case, I think Spur owns the Yinn Oil Corporation.

Q. W-I-N-N? A. Y-I-N-N.

Q. Houghland came to New York in October, 1937, 1960 for the purpose of discussing this with you, did he not? A. You mean this chain store taxation?

Q. Yes, the proposal to set up a number of subsidiary corporations. A. I don't recollect any details.

Q. Is it not a fact that you met him at his hotel and walked with him to the Plaza Hotel, and while you, during the walk he outlined the proposal to you? A. That is probable.

Q. And is it not the fact that when you reached the Plaza you talked to Dr. Frankenberg's room, and he came down, and you introduced Houghland to Frankenberg, and then the three of you went into the Palm Court and had a drink? A. That is possible, if Dr. Frankenberg lived at this time in the Plaza, and we called for him there, that is possible.

Q. And is it not a fact that before you had reached Frankenberg you told Houghland that he would have to make a full explanation of the proposal to Frankenberg?

A. No, Mr. Burling.

Q. The answer is no? A. No.

Q. Is it not the fact that at the Plaza Houghland made a full explanation of his proposal, and Frankenberg said he would not accept it? A. That is ridiculous, because I was—

1061 Q. All right, the answer is no. A. No, definitely no.

Q. Is it not also the fact that you walked away from the Plaza with Houghland, and you then told Houghland that you were sorry that Frankenberg had turned down the proposal, because you thought it was a good one? A. That is perfectly ridiculous.

Q. And did you not also say that Frankenberg was your father's financial representative, and that your father had great confidence in him, and that Frankenberg's decision was final? A. That is outright untrue, Mr. Burling.

Q. You are sure that that was not said? A. Definitely sure.

Q. By the way, where is Frankenberg, to the best of your knowledge and belief? A. I think he is in New York.

Q. He did not sail to Europe last Wednesday, as far as you know? A. I think he had to postpone his trip, or couldn't get a reservation, but I think he either sails today or tomorrow.

Q. You have been in touch with him this week? A. Oh, certainly, yes.

Q. When did you last communicate with him? 1062 A. I telephoned him last night.

Q. And when was the last time before that that you communicated with him? A. He visited me.

Q. When? A. Here in Washington.

Q. When? A. I think the day before yesterday.

Q. The day before yesterday—that is on Wednesday, the day he was supposed to sail. Where did you see him?

A. I met him at the airport.

Q. What time of the day did you meet him at the airport? A. The plane came.

Mr. Ingoldsby: I object to this. What is the relevancy of this?

Mr. Burling: This man Frankenberg is the managing director of plaintiff corporation. He obviously has, as the testimony that I have just gone through shows, a very important role in this case, and I am seeking to explore the fact that Frankenberg was here in Washington being met by Mr. von Opel, that we could have been told that, and his testimony could have been taken.

The Court: You have established that. The time is immaterial.

Mr. Burling: Yes, Your Honor.

1063

By Mr. Burling:

Q. Did you not go to Nashville, or to a place near Nashville, Tennessee, in the spring of 1938, and stay for several days in Houghland's home? A. Yes, Mr. Houghland invited me.

Q. On this occasion is it not true that Houghland asked you to tell him the nature of the Uebersee Company, and did you not tell him that it had been set up when Adam Opel stock was sold to General Motors, and that the Opel family had been very clever in avoiding foreign exchange regulations in connection with Uebersee? A. That is ridiculous.

Q. You did not say that to him? A. No, definitely not. Don't forget that I was warned against the loyalty of Mr. Houghland.

Q. Did you not tell Mr. Houghland on that occasion that the Uebersee shares at that time had been put through a purported sale, but that the shares were bearer shares in the possession of the Opel family? A. That is ridiculous, no.

Q. Did you suggest to Houghland that he himself could reduce his income taxes by becoming a Swiss national?

A. That is fantastic, an American citizen living—how can he become a Swiss national? He has to live in Switzerland 12 years. I couldn't even become a Swiss national.

1064 Q. Did you say anything to him about how he could avoid taxation? A. I was never concerned with other people's taxations.

Q. Did you discuss any business involving the Spur Distributing Company on the occasion of this visit? A. Certainly, that was the purpose of my visit.

Q. Did you do more than drop in for a few minutes at the Spur offices on that occasion? A. I don't recollect the length of times I spent in the office, or in Mr. Houghland's home.

Q. Coming to the summer of 1939, which I will fix in your mind by saying that was just before the war broke out, you were again on the Island of Sylt, were you not? A. Yes.

Q. Before you went to Sylt you sent Houghland a wire—I am sorry, you had received a wire from Houghland in Sanet Moritz, is that correct? A. At which date?

Q. July 20, 1939. A. I must check this date.

Q. Did you receive a wire from Houghland indicating that he was coming to Europe and wanted to see you? A. I think he said that to me. He wired, because at this time I was at some other place.

Q. Where were you? A. Let me see the dates 1065 and I can tell you.

Q. The date is July 20, '39. A. It is possible that I was in Sanet Moritz at this time. It is possible.

Q. What is your best judgment as to where you were? A. At this time I had a compound fracture and was very sick, and it is possible that I was in my home.

Q. I show you Defendant's Exhibit 63 and ask you if you received that wire. A. Yes, I think he wanted to get in contact with me.

Mr. Burling: I offer this in evidence.

(The document above referred to, a copy of a telegram dated July 20, 1939, was accordingly marked Defendant's Exhibit 63 and received in evidence.)

By Mr. Burling:

Q. You replied, did you not, inviting Mr. and Mrs. Houghland to visit your family's estate near Cologne?
A. I don't remember, sir, I invited him very frequently to Switzerland.

Q. Did you not invite him to a place you referred to as "our family estate"? A. It is possible. If you show me the wire, I can tell you.

Q. Strike out the word "family." Did you not invite him to "our estate" near Cologne? A. That is possible. What date is that?

Q. July 22, the day after the preceding wire. A. May I see it?

Q. Sure (handing a document to the Witness). Did you send this wire? A. Yes, I did.

Q. Does this refresh your recollection as to where you were on July 22 or 21? I invite your attention to the words following the signature, "Opel"; and then it says "Kampen Sylt." Does that refresh your recollection as to where you were? A. What is the date of this wire?

Q. July 22. A. No, I think that is not correct, it was sent from this place called Koerbecke.

Q. Where is that? A. That is near Cologne.

Q. You now think you were at Koerbecke at this time? A. At this date that is possible, yes.

Mr. Burling: I offer 64 in evidence.

(The document above referred to, a telegram dated July 22, 1939, was accordingly marked Defendant's Exhibit No. 64 and received in evidence.)

By Mr. Burling:

Q. What were you referring to by the words, "our estate"? A. My father had quite a large forests there.

1067 Q. Where? A. Near Koerbecke, the place mentioned on this wire, and as Mr. Houghland, who was interested in hunting and had expressed his wish to see how that was done in Germany, I told him he could come there and see that.

Q. What is the name of the estate? A. It is called Wilhelm von Opelsche Forstverwaltung.

Q. What is the name Wilhelmsruh? A. That is correct, Wilhelmsruh.

Q. What is that? A. Wilhelmsruh—ruh you call in German, how should I say, a place where you take a rest. Ruh means resting.

Q. And Houghland accepted this invitation, did he not? A. I don't recollect it, because I think there was—he couldn't arrange that.

Q. You do not recall that Houghland accepted the invitation? A. I don't recollect the details, because I, if I remember correctly, Houghland wanted to spend some more time in Ireland or England.

Q. Did you have any communications with Houghland about this? A. You just showed me the wire.

Q. No, I showed you a wire, what you said asking him to come to your estate. A. No, it doesn't say so, says to come to Hamburg or to this place.

1068 Q. Did Houghland accept the invitation? Incidentally, you say, do you not—

Mr. Ingoldsby: Just a minute, please. May I ask what you are reading from?

Mr. Burling: Yes, Defendant's Exhibit 64, which is already in evidence, Counsel.

Mr. Ingoldsby: That is all we want to know.

By Mr. Burling:

Q. "Would meet you any time Hamburg but would like both of you to come to our estate near Cologne after August 18. Regards." A. Yes.

Q. My question is, did Houghland accept that invitation? A. I do not recollect it, I think it did not fit in with his plans, hunting in Ireland.

Q. How did you learn that? A. He must have sent me a wire or a letter informing me.

Q. Do you recall how you were informed that Houghland would not come to your estate? A. No.

Q. I show you Defendant's Exhibit 65 and ask you if you did not receive this telegram. A. Yes.

1069 Mr. Burling: I offer it in evidence.

Mr. Gallagher: What date is that?

Mr. Burling: July 22.

(The document above referred to, a telegram dated July 22, 1939, was accordingly marked Defendant's Exhibit No. 65 and received in evidence.)

The Witness: I invited him for the 18th, and he said he would come August 25th.

By Mr. Burling:

Q. So on July 22 he said, "Delighted to accept invitation. Suggest about August 25 if convenient to you. Address American Express, London." Signed, Houghland.

Did Houghland come about August 25? A. No, he did not come because this time was not convenient for me, I had invited him for August 22.

Q. And how did you communicate that fact to him? A. I don't recollection. There must have been an exchange of wires.

Q. Did you not call him on the telephone, you in Cologne, and Houghland in London? A. At what time?

Q. After this. A. May I see the date again?

Q. The date is July 22. A. The date is July 22?

1070 Q. Of the wire. Did you not call him on the telephone? A. At what date?

Q. At any date thereafter? I am asking you how you communicated to Houghland the fact that August 25 was not convenient to you? A. I don't recollect that.

Q. Is it not the fact that you called Houghland on the telephone and urged him to come some time toward the end of August, 1939? A. The wire shows that he did not want to come before August 25.

Q. And about August 20, did you not call him on the phone and say, "Fine, come along on the 25th"? A. You mean invited him at the date he had suggested to come there?

Q. To this estate, Wilhelmsruh. A. To the estate, that is quite impossible, Mr. Burling.

Q. Did you have any conversation over the long distance telephone with Houghland on this occasion? A. From which place?

Q. From any place, to Houghland, in the month of August, 1939. A. I don't recollect any conversation, and normally I don't use long-distance telephones.

Q. So if you had made a long-distance call, it would have fixed itself in your mind. A. If you give me the date and place, I could check on it.

Q. The day was shortly before the end of August. A. What do you mean, shortly before?

Q. Around the 20th. A. Around the 20th?

Q. Did you not telephone him? A. From where?

Q. From the neighborhood of Cologne. A. No, definitely not.

Q. That is where you were at that time, is it not? A. No.

Q. Where were you? A. In Zurich.

Q. When did you reach Zurich? A. Some time before that date.

Q. When? A. That is a very long time ago, Mr. Burling, but I think a few days prior to the 20th.

Q. At any rate, while you were still at Wilhelmsruh, did you not call Houghland and urge him to come to Wilhelmsruh? A. Pardon me, you are implying me that I was prior to the date I came to Zurich in Wilhelmsruh, which is not correct.

Q. Where were you before you went to Zurich?
1072 A. I was in Kampen, because I had a broken leg, and the doctor had advised me to go to the seaside and into a cool climate.

Q. Did you spend the summer in Kampen? A. No.

Q. How long a time did you spend in Kampen? A. I think I was there about, offhand, two or three weeks.

Q. Is it not the fact that Houghland said that he would not come to visit you in Germany, because he thought that there was a war going to start? A. That was ridiculous.

Q. Did he or did he not say it?

Mr. Gallagher: What is this time again?

Mr. Burling: The same time, Counsel.

The Witness: I just told you I did not invite him at this time to come to Germany, because I had already left.

By Mr. Burling:

Q. Why don't you answer my question? A. Would you repeat it?

Q. Yes. Is it not a fact that Houghland said to you in words or substance, "I will not come to Germany now, because a war is about to break out"? A. That is impossible, because I did not invite him to Germany.

1073 Q. You can say that much more simply by saying no.

The Court: I think we will have to adjourn here.

(Accordingly, at 12:30 p.m. a recess was taken until 2:00 p.m.)

1074

AFTER RECESS

(The proceedings were resumed at 2 o'clock p.m., at the expiration of the recess.)

Mr. Burling: May I proceed, Your Honor.

The Court: Yes.

Mr. Burling: Your Honor, I would like to hand to the Court a copy of the petition for certiorari in Uebersee Finanz Korporation against Rosen, et al., which I have borrowed from the library of the Supreme Court. I cannot have it marked because I promised to return it today to the library of the Supreme Court, and I offer it solely for the filing stamp on the cover.

The Court: All right.

Mr. Burling: May the Record indicate the date, Your Honor.

The Court: Yes, April 17, 1936.

Cross Examination—Resumed

By Mr. Burling:

Q. Mr. von Opel, did you have any discussion with Mr. Davis or with any other lawyer concerning filing a petition for certiorari in the Supreme Court? A. I don't recollect it.

Q. You understand, do you not, that in layman's language filing a petition for certiorari in the Supreme Court is approximately equal to appealing to the Supreme Court?

A. Yes, I think I understand it.

1075 Q. Now, did you have any discussion with any lawyer about appealing to the Supreme Court in

the Gold case? A. I think the lawyers were advised to do the best they could. The details I do not understand because it was a very complex legal matter.

Q. Is it your testimony that Mr. Kresel and Mr. Davis went ahead and filed a petition for certiorari without being instructed to do so by you? A. I think they conferred with the corporation overseas and with the officers.

Q. Who did they confer with? A. I think with the officers of—

Q. Who, please. Name them? A. The officers of the corporation are Doctor Henggeler, Doctor Meier, the president, and Doctor Frankenberg.

Q. And you think the lawyers, before they filed a petition in the Supreme Court, conferred with one of those three men? A. The men—

Q. Answer my question, please. A. All the lawyers, I think they conferred with them. I think it was the natural thing to do. But I have no knowledge at this time. I could check the records, of course.

Q. Did you know that a petition for certiorari was being filed in the Supreme Court? A. I do not recollect that.

Q. Did you know that the record which contained your affidavit was filed in the Supreme Court of the United States? A. I do not recollect that. But it must have been because it went, I think, first to the District Court and then to the Court of Appeals and then—

Q. Those are courts in New York, are they not? A. I think so, yes.

Q. And then came down here to the Supreme Court in Washington? A. Yes.

Q. And you testified yesterday you took no steps to tell your lawyers that your affidavit was wrong on an important point before the Circuit Court record was filed, did you not? A. No. I think I didn't testify such.

Q. Well, at any rate, that is the fact, is it not? A. It is not even a fact because the affidavit refers to the time, to

all the happenings between this agreement and the time up to this affidavit.

Q. Correct. But did you not testify yesterday that you learned in the summer or fall of 1936 that Frankenberg was not your father's agent and, therefore, that the usufruct had not arisen? A. Yes.

1077 Q. And that is not what the affidavit says, is it?

A. The affidavit was filed—

Q. That is not what the affidavit says, is it? A. No. It was filed before this date.

Q. But the affidavit says something which you learned was incorrect, does it not? A. It was not incorrect at the time.

Q. No, but you learned from your father, did you not, that Frankenberg was not his agent and, therefore, that the usufruct had not arisen? A. Yes. My father refused to—

Q. Yes, you learned that, did you not? A. Yes.

Q. Fine. And now I ask you did you take any steps to see to it that an affidavit which contained a misstatement of fact or an error of fact was not filed in the Supreme Court of the United States? A. But this affidavit referred to the time prior to '35.

Q. Yes, but was Doctor Frankenberg ever your father's agent? A. I considered him as such at the time I filed the affidavit.

Q. Did you consider him as such at the time that the record was filed in the Supreme Court? A. Since 1078 the record was filed I hadn't even any idea what was going into this record as far as I remember. It was a mere constitutional question at the time.

Q. In 1935, you say, Meier was president of the plaintiff corporation? A. Yes, I think he was president at the time.

Q. This Eugen Meier, is it not? A. Yes.

Mr. Burling: I ask that Plaintiffs concede Defendant's Exhibits 66 and 66-A. 66 is a German memorandum taken

from the files of the plaintiff corporation, prepared by Doctor Eugen Meier.

Mr. Gallagher: What is that. I did not hear that.

Mr. Burling: I have not read them yet. Will you just give me a moment to read it.

If Your Honor please, these are documents taken from the files of the plaintiff itself. They have been in counsel's possession for some time.

Mr. Gallagher: I am sorry, Mr. Burling. I have never seen them.

Mr. Burling: May I ask, Your Honor, if counsel now withdraws from the stipulation which we entered into, that the genuineness of documents in the plaintiff's own files would be conceded and that we could use the photo-stats we made.

1079 Mr. Gallagher: I am not asking to withdraw at all, and I am not objecting, I am just trying to get an opportunity to look at it before you continue your cross examining, so I will know what you are talking about to Mr. von Opel.

Mr. Burling: If Your Honor please, I do not think I should be held up while counsel examines documents which have been in his possession for months.

Mr. Gallagher: I cannot have a photographic memory of every document.

The Court: If you have already so stipulated, I will receive it.

Mr. Gallagher: I am not objecting. I just want to read it.

The Court: Well, I will receive it, and you can be examining it.

(The documents referred to were marked and received in evidence as Defendant's Exhibits 66 and 66-A.)

Mr. Burling: I do not intend to examine. I merely wish to read into the Record a paragraph on page two.